

***United States Court of Appeals
for the Second Circuit***



APPENDIX

~~7-6142~~
76-1279

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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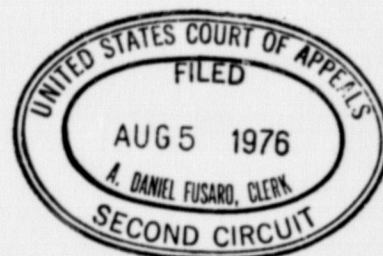
UNITED STATES OF AMERICA

-v-

FRANK MOTEN,

Appellant

APPELLANT'S APPENDIX



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PAGINATION AS IN ORIGINAL COPY

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DATE	PROCEEDINGS	EXCLUDABLE DELAY
4-27-76	Filed Dfts. Application for release.	
4-27-76	Filed Memo. End. on Application for release. Motion for reargument granted & an reargument the motion is still denied.Mac Mahon (mailed notice)	
4-29-76	Frank Moten (Atty. Arnold E. Brown present) Bail reduction application Bail cont'd at \$600,000,000. Dft. Remanded Owen J.	
5-13-76	Issued Remand.	
5-13-76	Filed Dft.s Notice of Motion for an order directing dfts. bail be reduced & further relief.	
5-18-76	Filed Mag. Final Commitment.	
5-18-76	Filed Gov'ts Memorandum in opposition to Moten's Application for a reduction in bail.	
5-21-76	Filed Dfts. Reply Memorandum in support of the application to reduce bail.	
5-21-76	Filed Dfts. Affidvt. & Memorandum in support of various pretrial applications.	
5-24-76	Filed Dfts. Notice of Motion for order granteing further relief Ret. 6/1/76.	
5-25-76	Dft. Frank Moten Appears (Atty. Nancy Rusner Present) for bail application. Application is denied.Owen J.	
6/1/76	All Motions Rtn. Jun 1st Are Adjourned to June 4th @2:00P.M.	
6-7-76	Filed Dfts. Notice of Appeal from Order denying motion to reduce bail. XXXX dtd. 5-25-76 (mailed notice)	
6-8-76	Filed transcript of record of proceedings, dated 4-27-76	
6-8-76	Filed transcript of record of proceedings, dated 4-26-76	
6-3-76	Filed transcript of record of proceedings, dated 4-29-76-10:30 am.	
6-15-76	Filed Gov'ts. Bill of Particulars.	
6-16-76	Filed Opinion #44578. The Gov'ts Memorandum of law 17 Matters with prepared to accede as to each dft. as indicated. The Gov't. concession is made the order of this court. & the Gov't is to forthwith comply therewith.Owen J. (mailed notice)	
6-18-76	Filed Order that each dft. represented yb counsel who is appointed under Criminal Justice Act is authorized to retain investigation services & expend up to the statutory limit of \$300.00 & dfts. may at their option retain the named investigator & apply their authorized moneys severally to his fee as allowed by this Court...Owen J. (mailed notice)	
6-23-76	Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.	

DATE	PROCEEDINGS
	Judge Owen
6-30-76	Filed order that all voir dire Questions are to be submitted by 7-14-76 OWEN, J. m/n/.
6-29-76	Filed Opinion #44673. Def't's John Casra, Steven Dellacava and Leoluca Guarino, are collectively sever for a later trial. Beyond the foregoing, all motions to sever or denied. OWEN, J. m/n/.
6-21-76	Suppression Held....Owen J.
7-7-76	Filed Memorandum & Order. Def't. Frank Moten moves to suppress all interceptions of his conversations as indicated. It is accordingly denied. The foregoing is so ordered.....Owen J. (mailed notice)
7-7-76	Filed Memorandum & order. It is ordered in the interests of justice, that the trial of this action is adjourned from 7-19-76 to 8/10/76, to begin at 10:00 a.m. in Courtroom 318Owen J. (mailed notice)
7-9-76	Filed Memorandum Order Trial has been adjourned to 8-10-76, proposed voir dire questions due 8-3-76 directly to Chambers....Owen J. (mailed notice)
7-15-76	Filed Opinion #44760. All Motions of def'ts, as moved for discovery & inspection & bill of particulars, are denied. Certain def'ts, moved for psychiatric information as indicated, The Foregoing is so Ordered.....Owen J. (mailed notice)
6-18-76	<i>Filed transcript dated May 21, 1976 (Def't Moten)</i>
	<i>10-3 minutes of proceedings filed 6/1/76</i>
	<i>10-3 minutes of proceedings filed 6/4/76</i>
	<i>10-3 minutes of proceedings filed 6/5/76</i>
	<i>10-3 minutes of proceedings filed 6/10/76</i>
7-16-76	Filed Opinion #4-768. All motions seeking disclosure of Gov't witnesses are denied. Def'ts. motions to disclose identity of cooperating def'ts. denied. Various Def'ts. move to dismiss indictment on grounds of preindictment delay, motions denied. Movants seeking order enjoining Gov't from cross examining them about past record, any movant seeking this issue, hearing will be held on 7/21/76 in Room 318. All other motions denied as indicated.....Owen J. (mailed notice)
7-20-76	Filed Opinion #44769. Gov't order to deliver in camera inspection as indicated.Owen J. (mailed notice)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

INDICTMENT

76 Cr. 324

JUAN ANTONIO ALVAREZ, a/k/a "Tony,"
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis,"
FRANK MOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a
"Benny," a/k/a "Mr. B,"
JOHN CAPRA, a/k/a "Johnny Hooks,"
LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie,"
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch,"
JOSEPH SAMPSON, a/k/a "Bootsnose,"
LOIS SAMPSON,
ANN REYNOLDS, a/k/a "Lois's
Sister,"
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT,
AL WILLIAMS, a/k/a "Big Al from
Chicago,"
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South
Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe,"
TOMMY DAVIS, a/k/a "Bifty,"
BERNARD BRIGHTMAN, a/k/a "Nabe,"
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.,"
SOLON GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi,"
MARION DUNMORE, a/k/a "Shi's
Woman," a/k/a "Toni,"
ALBERT LEE JONES, a/k/a "Al from
Norfolk,"
HELEN KELLEM, a/k/a "Pam,"
JOHN P. MORGAN, a/k/a "J.P.,"
NELSON ALVAREZ, a/k/a "Tony's
Brother,"
EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's
Cousin,"

Defendants.

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1968, and continu-
ously thereafter up to and including the date of the filing

of this indictment, in the Southern District of New York,
and elsewhere,

JUAN ANTONIO ALVAREZ, a/k/a "Tony,"
ANGEL RODRIGUEZ, a/k/a "Angelo,"
JOSE LUIS SUREDA, a/k/a "Luis,"
FRANK MOTEN, a/k/a "Uncle,"
SEBASTIAN INTERSIMONE, a/k/a
"Benny," a/k/a "Mr. B,"
JOHN CAPRA, a/k/a "Johnny Hooks,"
LEOLUCA GUARINO,
STEVEN DELLACAVA, a/k/a "Beansie,"
WILLIAM HIGHTOWER,
SIDNEY FOSTER, a/k/a "Chinch,"
JOSEPH SAMPSON, a/k/a "Bootnose,"
LOIS SAMPSON,
ANN REYNOLDS, a/k/a "Lois's
Sister,"
MICHAEL PARKER,
YVONNE ALVAREZ SCHENNAULT,
AL WILLIAMS, a/k/a "Big Al from
Chicago,"
DONALD O'DOOD,
DON WILSON, a/k/a "Don from South
Carolina,"
JAMES LAWS, a/k/a "Tobe the Robe,"
TOMMY DAVIS, a/k/a "Bipty,"
BERNARD BRIGHTMAN, a/k/a "Nabe,"
JOHN MORRIS, a/k/a "Papers,"
LAWRENCE MITCHELL, a/k/a "L.J.,"
SOLOM GLAZE, a/k/a "Solo,"
RAPHAEL BONILLA, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
CHARLES COWPERS, a/k/a "Shi,"
MARION DUNMORE, a/k/a "Shi's
Woman," a/k/a "Toni,"
ALBERT LEE JONES, a/k/a "Al from
Norfolk,"
HELEN KELLEM, a/k/a "Pam,"
JOHN P. MORGAN, a/k/a "J.P.,"
NELSON ALVAREZ, a/k/a "Tony's
Brother,"
EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
LAZARO YAUJAR, a/k/a "Angelo's
Cousin,"

the defendants, and others to the Grand Jury known and
unknown, unlawfully, wilfully and knowingly, combined,
conspired, confederated and agreed together and with each
other, to violate the narcotics laws of the United States,
specifically, Sections 173, 174, 812, 841(a)(1) and
841(b)(1)(A), 951, 952 and 960 of Title 21, United States
Code.

THE OBJECTS OF THE CONSPIRACY

2. It was part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amounts of narcotic drugs, specifically heroin and cocaine, from and through countries unknown in South America and other places, in violation of Sections 173, 174, 951, 952 and 960 of Title 21, United States Code.

3. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators, unlawfully, wilfully and knowingly would receive, conceal, keep, sell and facilitate the transportation, concealment and sale of narcotic drugs, specifically heroin and cocaine, after these narcotic drugs had been imported and brought into the United States contrary to law, knowing that these narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly, would distribute and possess with intent to distribute heroin and cocaine, which are classified under law as Schedule I and II narcotic drug controlled substances, in violation of Sections 812, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS AND CO-CONSPIRATORS TO ACCOMPLISH THE OBJECTS OF THE CONSPIRACY

5. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and insure the success of the unlawful venture to import, buy, sell and distribute narcotic drugs for profit, were the following:

(a) The conspiracy took the form of a loose-knit business organization with members of the conspiracy operating at three basic levels. At the first level, some of the defendants and co-conspirators served as importers and sources of supply of narcotic drugs. At the second level, other members of the conspiracy acted as middlemen, purchasing narcotic drugs, in wholesale quantities directly from the suppliers. In turn, these middlemen sold heroin and cocaine in multi-kilogram quantities to defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from sources of heroin and cocaine through middlemen, wholesalers and retailers and ultimately to narcotic addicts and users in New York City, Washington, D.C., Chicago, Illinois, Miami, Florida, and other cities in the United States.

(b) During the course of the said conspiracy the said defendants played the following roles in this conspiracy:

Importers and Sources of Supply

(1) Defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," were importers and suppliers of cocaine, doing business in New York City and Miami, Florida, who between 1968 and 1974 sold approximately 70 kilograms of cocaine each year.

(2) Defendant SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B," was a supplier of heroin, doing business in New York City.

(3) Defendants JOHN CAPRA, a/k/a "Johnny Hooks," LEOLUCA GUARINO and STEVEN DELLACAVA, a/k/a "Beansie," were suppliers of heroin, doing business in New York City, who between 1970 and 1973 sold kilogram quantities of heroin each month.

Wholesale Middlemen

(4) John Brown, a/k/a "Jack," named herein as a co-conspirator, but not as a defendant, was a bulk purchaser of heroin and cocaine from the importers and sources of supply.

(5) Defendant FRANK MOTEN, a/k/a "Uncle," was an advisor to John Brown, a/k/a "Jack," delivered narcotic drugs to Brown and received drugs from him, introduced certain defendants and co-conspirators to Brown for the purpose of purchasing drugs, vouched for them as reliable persons, financed the narcotic operations of several of the defendants and co-conspirators, engaged in financial dealings for Brown and other of the defendants and co-conspirators, and shared in the profits of the conspiracy.

(6) Defendant MICHAEL PARKER delivered narcotic drugs on several occasions to several of the defendants and co-conspirators.

Wholesale Traffickers

(7) Defendants WILLIAM HIGHTOWER, SIDNEY FOSTER, a/k/a "Chinch," JOSEPH SAMPSON, a/k/a "Bootnose," and LOIS SAMPSON, purchased and resold kilogram quantities of heroin and cocaine while doing business in Washington, D.C. and New York City.

(8) Defendants YVONNE ALVAREZ SCHENNAULT, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD purchased and resold kilogram quantities of heroin and cocaine while doing business in Chicago, Illinois, Miami, Florida and New York City.

Five, Six and Seven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," occupied a position of organizer, supervisor and manager, and from which continuing series of violations the defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841 (b)(1)(A) as alleged in Counts Eight, Nine, Ten and Eleven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant FRANK MOTEN, a/k/a "Uncle," occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant, FRANK MOTEN, a/k/a "Uncle," obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT SEVEN

The Grand Jury further charges:

In and about the Summer of 1973, in the Southern District of New York, JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 15 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

In and about September, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about October, 1972, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TEN

The Grand Jury further charges:

In and about January, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT ELEVEN

The Grand Jury further charges:

In and about April, 1973, in the Southern District of New York, FRANK MOTEN, a/k/a "Uncle," and BERNARD BRIGHTMAN, a/k/a "Nabe," the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

In and about the Fall of 1971, in the Southern District of New York, SEBASTIAN INTERSIMONE, a/k/a "Benny," a/k/a "Mr. B.," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

1 jqsr

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA, :

6 - v s - :

76 Cr. 324

7 FRANK MOTEN, :

8 Defendant. :

9 -----X

10
11 B e f o r e :

12 HON. LLOYD F. MacMAHON,

13 District Judge

14
15 New York, N. Y.
16 April 26, 1976 - 10:30 a.m.

17
18 A p p e a r a n c e s :

19 ROBERT B. FISKE, JR., ESQ.,
20 United States Attorney for the
21 Southern District of New York;
22 By: DANIEL BELLER, ESQ.,
23 Assistant United States Attorney.

24 ARNOLD E. BROWN, ESQ.,
25 Attorney for the Defendant.

Also present:

LARRY FARKASH, ESQ.

[Case called.]

MR. FARKASH: There was a March indictment handed down last week and my understanding is that there is a possibility that there will be an application sometime this morning to reduce bail on one of the defendants, Frank Moten.

THE COURT: Has the case been assigned to a Judge?

MR. FARKASH: No, it's on for pleading this Thursday in Part 1. I have informed the gentleman, whose name I don't even know at this point, that certainly Mr. Beller, who is the Assistant assigned in the case, would have to be notified and would have to be present.

THE COURT: Do you have an application for bail? I am here.

MR. FARKASH: I have just been in contact with Mr. Beller and he has the attorneys for Mr. Moten in his office and they are coming right down now for the application. If you bear with us for three minutes I suppose they will be here.

THE COURT: All right.

[Pause.]

THE COURT: I will hear your application.

MR. BROWN: My name is Arnold Brown and I

represent Frank Moten who has been indicted and who surrendered himself Friday. We appeared before a Magistrate who set a bail at the sum of \$600,000. The U. S. Attorney has requested \$1,000,000 bail.

Prior to proceeding in this matter, I thought since the bail request is so high the Court may want to have the defendant present and also be able to observe the defendant and the defendant might like to say something in his own behalf.

THE COURT: No, he is represented by a lawyer. I will hear you.

What is the charge?

MR. BROWN: The charge, if your Honor please, is an indictment in this count, a drug conspiracy count. In the second count it indicates, the allegation being that he, Mr. Moten, controlled, managed and operated --

THE COURT: Is this the case that broke in the newspapers over the weekend with 33 defendants?

MR. BELLER: Yes, sir.

THE COURT: I read the newspaper accounts. Are those reasonably accurate as to the charges?

MR. BROWN: Yes, your Honor.

THE COURT: Then I am familiar with it. I just want to spare you this.

1 jqsr

2 Why is the bail too high?

3 MR. BROWN: First of all, your Honor, the
4 bail is not geared to provide a reasonable opportunity
5 for the defendant to be released. He does not have funds
6 with which to make such an outlandish bail.

7 Let's look at the elements that go into the
8 decision of the Court in setting a bail. First of all,
9 we know that the purpose of any bail is to reasonably
10 assure the defendant's presence in court to answer the
11 charges. Mr. Moten has been indicted in Atlanta, Georgia,
12 in a U. S. District Court there. He had to post \$25,000
13 bail. He was restricted in his travel to the State of
14 New York, the State of New Jersey, Massachusetts, Ohio,
15 and Georgia. He was indicted I believe it's over a year
16 now.

17 He has made each and every Court appearance
18 and there have been numerous appearances in that case.

19 THE COURT: What was the charge there?

20 MR. BROWN: A conspiracy to operate in lottery.

21 THE COURT: That is not a comparable case. This
22 conspiracy is a large international narcotics conspiracy
23 alleging illegal importation, distribution, sale of
24 massive amounts of cocaine and heroine, as I recall the
25 counts.

MR. BROWN: That is what has been said by the U. S. Attorney.

THE COURT: The charge on the lottery thing is kind of spitting on the sidewalk.

MR. BROWN: He has also been charged with a drug conspiracy in the U. S. District Court in Newark, New Jersey. Some of the same facts, some of the same evidence, some of the same dates coincide with the dates that they have in this indictment.

THE COURT: And that case released him on \$50,000 bail, 25 surety bail and 25 ROR.

MR. BROWN: In that case reviewed that indictment, reviewed the circumstances and found that \$50,000 was an adequate amount to insure his appearance. Each and every time we had to appear in court, if the Court please, Mr. Moten was there. He was responsive. He answered the demands for his appearance.

Now even though the indictment has 33 people involved, the indictment is heavy, it has 40 counts, 25 pages long and it recites numerous incidents.

I submit to the Court that by and large this is the same indictment except for amounts that he is charged within New Jersey. From the sum and substance of this case it appears that there is a person who was

the informant in the New Jersey case and is also the informant in this case, a woman who has been arrested 55 times, has spent half of her life in prison, a paid informant, one who testified last Fall, the early part of the winter, in a case and here testimony was completely put aside because the jury didn't believe it and everybody in that case was set free, one of the witnesses of the Government in this case.

Another witness for the Government in this case, in our investigation, and it has been a short time, but we have been able to resolve this, is a fellow by the name of Jack Brown who is an unindicted co-conspirator in this case who has been a fugitive from justice, who has charges outstanding against him that could get him life in jail, a man who, as our investigation reveals, has probably been in the custody of the Government now for the better part of the year, a man who is sick, a man who has real serious mental problems. He is the unindicted co-conspirator in this case.

This is what the Government is resting their case on.

It would appear to me that that man just recently implicated my client in this matter, no more than a couple of months ago. What happened to him while

1 he was in incarceration for ten, twelve months? What
2 happened to him? It has come to our attention, and we
3 have heard it many times since Mr. Moten has been involved
4 in litigation commencing as of October and December of
5 1974 that he is the constant subject of harassment.
6

7 In September of '74 his house was entered into
8 with about 15 to 20 agents. The affidavit that they used
9 to get the search warrant, I submit to the Court, was as
10 a result of perjury. There is a civil suit presently on
11 file. In part of our litigation in Atlanta, Georgia the
12 U. S. Attorney there admitted that the facts in that
13 affidavit were not true, yet they were able to get into
14 this man's house and ever since they went into his house
15 they have been harassing him. Not only do they talk to
16 his neighbors, his business associates, his social
17 acquaintances, all telling a story that this man is the
18 most vile and vicious man that this country has ever known,
19 that this man is a narcotics dealer, that this man is a
20 murderer.

21 They say all of these things yet they have no
22 evidence to back it up, your Honor. They have poisoned
23 all of his friends. They have poisoned the community.

24 Their latest demonstration of poisoning the
25 very atmosphere of which we are supposed to have a free

and fair society is the press release they gave out last week, the things they said about my client, things that can't be proved, things that are not true. Yet it wasn't necessary for them to do that. It wasn't necessary for them to poison the mind of the community. It wasn't necessary for them to poison the mind of the community. They could have made their arrest and we could have went about the judicial procedure as we always do.

No, they chose to put this in front of the public and besmirch further my client. My client owned a laundromat in New York City. They broke in there with 35 agents, shotguns drawn, and pulled a gun on my client's seventeen-year old daughter. Unnecessary.

They have followed my client on a 24-hour surveillance. They have followed his children, they have called his wife. They have even followed his wife to my office when she comes in for consultation and stand outside of my door, utter harassment, not geared to produce any kind of evidence but harassment. This is what this man is going through.

Mr. Moten is a black man, a black businessman, an entrepreneur in the Harlem area and he has been successful. He has had a couple of businesses. He knows a lot of people but that is not evidence of any guilt.

1
2 That is not evidence that this man is engaged in any
3 narcotic trafficking. They have talked to everybody. They
4 have poisoned everybody. His friends will turn from him
5 because of what the FBI and the DEA are saying to them.
6 These are the kinds of harassments that this man is going
7 under.

8 I submit to the Court that the offenses charged
9 in this affidavit are groundless, have no substance, and
10 are based on a paid informant, as I indicated before,
11 a Marcia Labb, 55 arrests, been in jail more than half
12 her life and on this exact ground.

13 Mr. Moten is a married man, a family man.
14 He has been married more than 20 years. He is devoted
15 to his wife and his children. His wife happens to be
16 in court this morning with two of the children indicating
17 their firm belief in the innocence of this man. This man
18 lives in Englewood, New Jersey, his residence there, lives
19 in a one-family house.

20 He has lived in the Metropolitan New York area
21 for better than 30 years, has participated in this com-
22 munity businesswise and residentialwise for better than
23 30 years. He has supported many of the community projects
24 and has been personally involved in many of the community
25 projects for the betterment of Harlem and the betterment

of the general community.

He has been self-employed most of his adult life. During 1974 when he had one of his businesses which was a jewelry business, when the agents broke into the house they removed his entire inventory, confiscated it alleging that that had to do with gambling paraphernalia, that that had to do with controlled dangerous substances and that inventory is still in the Federal House in Newark, New Jersey. They refuse to return it.

They refused to provide this man with a livelihood, a means of making a livelihood. This man is also a licensed real estate broker but after the agents went through his address book, his business and social book, it's difficult to get clients, it's difficult to make real estate transactions.

This man has a physical disability now. He has had a heart problem for many years and he is presently disabled receiving less than \$400 a month. The Government has fantacized and indicated this man made more than \$5,000,000 in one year. Utter fantasy.

They say he has limitless assets. They can't demonstrate or show it. They can't show where his assets are that they claim he has. It's all imagination. It's all fantasy.

I submit, your Honor, that the only asset Mr. Moten has the laundromat business, his house at 481 North Englewood Street in New Jersey, and I submit to the Court that those affidavits have Internal Revenue liens on them, mortgage liens on them and have no appreciable value to him as of this date.

The Internal Revenue, as a result of the illegal search in September of 1974, placed a \$250,000 lien, tied up all of his property, tied up two safe deposit boxes which have been inventoried but have tied them up literally, tied up the children's assets in those boxes and refused to remove them and release them.

There is an economic squeeze on this man so that he can't make a living, so that he can't pay for counsel, so that he can't have a fair trial, so that he cannot defend himself properly.

THE COURT: Are you retained counsel?

MR. BROWN: I am retained, your Honor.

So the financial resources that this man has is limited, not limitless, limited. I submit to the Court that placing a \$600,000 bail on this man in effect is a denial of bail.

The Government has not indicated why this man should flee nor that he has a means to flee. He has

2 demonstrated in the past that he has been responsible
3 and responsive to the bail that he is presently under.

4 Mr. Moten has one conviction, your Honor, and
5 it's an old OPA conviction back in 1943, served six months
6 in Danbury, the only conviction. No narcotics convictions.
7 No evidence of narcotics involvement at all.

8 I submit to the Court that a demand for
9 \$1,000,000 is outrageous and unreasonable and that the
10 \$600,000 is just as outrageous because they might as
11 well set bail at \$10,000,000 as they might set it at
12 \$600,000.

13 Mr. Moten, your Honor, is a sick man. Mr.
14 Moten is under the treatment of his general physician,
15 Dr. Gorham, and a cardiologist by the name of Dr. Pritchard.

16 He first suffered a heart attack in 1964 and
17 spent better than a month at New York Hospital. In 1966
18 he again went to the hospital which was a result of
19 an auto accident in which he had sustained injuries.
20 Again in 1973 he entered the St. Luke's Hospital where he
21 went for treatment. He received injuries to his left
22 eye while he was riding in a car --

23 THE COURT: I am sorry, I have been hearing
24 you here for about 25 minutes. I do have other matters
25 on this morning.

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2 MR. BROWN: I just want you to know what kind
3 of man and what kind of circumstances surround him.

4 THE COURT: How old is he?

5 MR. BROWN: 54 years of age, your Honor. In
6 1973 he entered St. Luke's and in October of last year he
7 entered a hospital for his heart condition, angina. He
8 spent about two weeks in the hospital and the doctor
9 indicated that he had an unstable heart condition. His
10 condition was so bad that he could not stand trial in
11 Atlanta, Georgia.

12 The Government had Dr. Welsh come in and
13 examine him to determine whether or not this man was really
14 telling the truth. Is his condition as bad as they make
15 it out, and Dr. Welsh examined him and rendered a report
16 to Judge Hill in Atlanta, Georgia indicating that this
17 man's physical condition was such that he was unfit
18 physically to withstand the rigors of the trial.

19 On the basis of that he was severed from the
20 case in Atlanta. This is on their expert, their doctor.
21 I submit to the Court that this man is under constant
22 medication. He takes nitroglycerin. He takes enderol
23 three times a day. He takes isadell four times a day,
24 liquid potassium, innumerable prescribed medications
25 this man takes in order to maintain his physical balance

as best as he can.

The doctor is now trying to evaluate whether or not surgical intervention is necessary in order to help this man. I submit to the Court that he is 54 years old and if we look at any life expectancy tables, 20 years is his life expectancy and the charges in Atlanta, the charges in Newark, New Jersey, if he were found guilty on any of them, any of them, it's like getting sentenced to life.

If he were sentenced in this case on any of the counts, any kind of sentence that is going to come anywhere near to 20 years is like sentencing this man to life. The man did not run --

THE COURT: You are ahead of yourself. I am thinking now about a bail application, not sentence.

MR. BROWN: I say this to your Honor: The U. S. Attorney has indicated that these charges in this indictment are so severe and so harsh that this would frighten a man and this man would run. I am saying to the Court that he is under similar indictments and he has maintained his presence when required and I would submit to the Court he would be here.

THE COURT: All right.

MR. BELLER: Your Honor knows this is a 40-count

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2 indictment. This defendant is the principal defendant
3 charged in this case. He is charged with four substantive
4 counts, a conspiracy count, and with the charge under
5 Section 848 of Title 21 which is a life count which carries
6 with it as well a fine, if convicted, of \$100,000.

7 Mr. Moten is alleged in the indictment to be
8 a financier of narcotic purchases of many of the defendants
9 charged in this case and himself a supplier of narcotic
10 drugs. His activity continues from the inception of
11 this conspiracy in 1968 until the time of the filing of
12 the indictment.

13 Parenthetically the New Jersey indictment
14 relates to a very narrow period of time in 1972. But the
15 evidence in this case, as the indictment charges, involves
16 Mr. Moten from the very beginning of this conspiracy
17 up until the filing of the indictment.

18 THE COURT: Over what period of time?

19 MR. BELLER: From 1968, your Honor, until 1975-
20 '76.

21 The Government submits that Mr. Moten has a
22 substantial incentive to flee in view of the charges.
23 He is presently awaiting trial in Atlanta. In that case
24 Mr. Moten, and I believe ten other defendants, were
25 charged in a gambling conspiracy. A week before trial,

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2 shortly before trial, Mr. Moten advised the Court that
3 he was too ill. He was severed from the trial. All of
4 his co-defendants were convicted in that case, your Honor.

5 Mr. Moten was charged with being the manager
6 of that conspiracy and there is strong reason to believe
7 that had Mr. Moten stood trial he too would have been
8 convicted on those charges.

9 The Government's information is that Mr. Moten,
10 who was taking pills for an angina condition, simply
11 stopped taking his pills shortly before the trial. He
12 is facing these narcotics charges in Newark and he is
13 now facing these very substantial charges in this District.

14 THE COURT: What is the scope of the Newark
15 conspiracy? Is it comparable to the scope alleged here?

16 MR. BELLER: Not at all, your Honor. It's
17 a very narrow conspiracy relating to several months of
18 activity in 1972. I believe all but one of the defendants
19 named in that indictment have nothing to do with this
20 case. One of the defendants in that case is named as
21 a conspirator in this case or I believe one of the co-
22 conspirators in that case is also a co-conspirator in
23 this case. But those involve a discrete transaction.
24 If anything, it is a pebble in the large sands of this
25 conspiracy and of the charges involved here.

Mr. Brown has spoken frequently of agents breaking into homes and offices of Mr. Moten. All of the searches were done pursuant to warrants.

In December 1974 agents of the Federal Bureau of Investigation pursuant to a warrant issued by a District Judge of the United States District Court executed a warrant on Mr. Moten's laundromat, alleged laundromat, and the search revealed gambling slips, policy slips on which an IRS audit was done. Based on the audit of the slips and the diaries found in the possession of Mr. Moten the IRS has calculated that for a period of 69 days Mr. Moten's gambling operation netted him slightly in excess of \$1,000,000, your Honor, \$1,128,000.

From this the IRS concludes that for a yearly figure Mr. Moten was making somewhere in the vicinity of \$5,000,000.

In addition, another search was conducted pursuant to warrant, a warrant whose validity has already been upheld by the State Court in New Jersey and that search disclosed Mr. Moten in possession of approximately \$36,000 worth of stolen goods including jewelry, watches, gold coins of various sorts, and so on, and an additional \$12,000 in cash.

Mr. Brown insists that this is the subject of

the litigation, and indeed it is, and I would like to hand up to your Honor a copy of a news report from the Bergen Record of June 13, 1975 indicating that the IRS jeopardy assessment against Mr. Moten for the goods seized was upheld by the Court based on a calculation of \$1,000,000 in net assets.

The jeopardy assessment had been of something in the vicinity of 240-odd thousand dollars. That assessment was upheld.

Mr. Moten is known to law enforcement officials as one of the most important figures in organized crime in the New York area. Mr. Moten is believed to have organized and to head what is known as the Council of Twelve which is an organization, a loosely knit type of organization, which is charged with making decisions for the narcotics traffic in Harlem and in the New York area among black traffickers. Mr. Moten is known to be an associate of Nickie Barnes who is known to be one of the largest narcotic dealers in the United States, a Frank Matthews, presently a Federal fugitive and Zack Robinson, also a Federal narcotics fugitive.

I should point out that other defendants in this case have claimed that they were unable to make bail set by the Magistrate. Once the Magistrate was firm in

the bail that he fixed all those who stated that they could not make such bail have indeed made such bail.

I would like to hand up to your Honor with the Court's permission a copy of the Grand Jury minutes in the case in Indictment 76 CR. 324. The minutes relate to proof in the Grand Jury of the substantial income made by the defendant as a result of his narcotic purchases, transactions, an element of the crime under Title 21, United States Code, Section 848.

I direct your Honor's attention to Pages 3 through 66 of this Grand Jury testimony and alert the Court to what should be the clear fact that the identity of the witness and the witnesses involved in this case are now known to the defendants.

With the Court's permission, however, because the question of the availability of assets to Mr. Moten has been raised by defense counsel the Government would like to respond by handing up these minutes.

THE COURT: Has counsel seen them?

MR. BELLER: No.

THE COURT: Do you want me to read them in camera?

MR. BELLER: Yes, your Honor.

THE COURT: I don't think I should. I will

disregard anything in the Grand Jury. They are secret and unless you move to open them I am not going to consider them.

MR. BELLER: Let it be sufficient that Mr. Moten has been indicted under Section 148 and one of the elements required to be proved before the Grand Jury is that the defendant has substantial income.

THE COURT: He is presumed to be innocent. The mere fact that he has been indicted is no evidence that he has committed a crime. Certainly this Court can't consider any such and won't.

MR. BELLER: Not at all, your Honor. I am pointing out that the Government has in its possession, in addition to the IRS audit of the gambling records seized themselves from Mr. Moten's laundromat, evidence of his really limitless wealth available to this defendant.

Under those circumstances the Government believes that the bail that was set here by the Magistrate will hopefully be reasonable and sufficient --

THE COURT: Are there any foreign connections in this alleged conspiracy? Are any of the defendants foreigners?

MR. BELLER: Yes, your Honor.

THE COURT: Are any of the co-conspirators

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2 foreigners, living abroad?

3 MR. BELLER: Not known to the Government at
4 this time.

5 THE COURT: Their whereabouts unknown?

6 MR. BELLER: Correct.

7 THE COURT: Is this conspiracy an international
8 one?

9 MR. BELLER: Yes, certainly with respect to
10 the cocaine, your Honor.

11 THE COURT: Where is it alleged to have been
12 brought?

13 MR. BELLER: From South America. I should
14 point out that Mr. Moten has made extensive trips overseas.
15 He has holdings in the Bahamas. He has made trips to the
16 Bahamas. He travels to Spain.

17 He has traveled to Africa where he has, we
18 believe, business interests. Whether they are legitimate
19 or not is not at this time known. He has resources
20 sufficient to enable him to do that. He makes use of them.

21 He is well traveled throughout the world and
22 has access to travel at any time.

23 With respect to his illness, I have already
24 commented on his absence from the Atlanta trial. At the
25 time of this arrest Mr. Moten was out of town, presumably

traveling on whatever affairs he has. He has been surveilled traveling around the New York area going about his ordinary business.

He seems perfectly able to function. Whatever disabilities he has I am sure that the facilities in the Metropolitan Correction Center are able to take care of that. They have medical help and if there are any extraordinary problems the Government would be able to supply whatever medical assistance is needed.

Therefore, your Honor, because of the defendant's role in narcotics and organized crime activities in New York, because of the very substantial charges against him, because of the strong proof the Government has against him, because of his substantial motive to flee in this case and the means that he has readily available to him to flee, the Government believes that the bail set by the Magistrate is reasonable and would ask that your Honor maintain that bail.

THE COURT: Very briefly, five minutes to reply.

MR. BROWN: If your Honor please, the U. S. Attorney is still fantasizing. He still has not demonstrated or showed us that Mr. Moten has an asset other than his house and the business in the laundromat. I haven't seen it.

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2 I haven't heard any statements that he has
3 any other assets. Allegedly \$5,000,000.

4 I submit to your Honor it's like being in
5 Alice in Wonderland hearing the tale of international
6 intrigue. Mr. Moten went to Zaire to see, as a fan,
7 the Mohammed Ali fight and that is supposed to be some
8 sinister meeting or checking out of business, narcotic
9 transactions. I don't fathom it, your Honor.

10 It is true that there was a search on the
11 laundromat in New York and there was no evidence, no
12 evidence at all of any involvement in narcotics or in
13 policy or anything, your Honor.

14 THE COURT: You mean he is misrepresenting
15 to me that they filed policy slips, are you telling me
16 that?

17 MR. BROWN: Your Honor, I have seen the
18 return, the inventory return, your Honor, and there is
19 no evidence of any policy slips.

20 THE COURT: Or gambling paraphernalia at any
21 time?

22 MR. BROWN: No, your Honor. It is a coin
23 operated laundromat and has been so and it has been under
24 surveillance a long time, it is true. There has been
25 no indictment coming out of that. There has been no

State indictment coming out of it.

They found such gambling paraphernalia? It is not so, your Honor.

MR. BELLER: It's simply not so, your Honor. This is an IRS report and let me alert your attention to Page 3, the bottom paragraph.

THE COURT: I deny the application. Counsel, that is a flat misrepresentation. I have heard you.

MR. BROWN: Your Honor --

THE COURT: I have heard you. I deny the application. It's plain to the Court that this defendant is charged with an immense crime involving an international connection and conspiracy to deal in massive quantities of cocaine and heroin.

The incentive to flee is overwhelming not simply because he apparently would have the means to do it, the means are not required to flee the jurisdiction and they are not large.

All they take is a relatively few hundred dollars to buy a plane ticket. It's plain that anyone involved with the men with whom he is associated, with the defendants here, has the wherewithal to escape the jurisdiction and to survive abroad if he chooses to do so.

As far as his medical condition exists, the

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2 Court entertains serious doubts on the basis of the showing
3 here whether perhaps that isn't feigned. But even assuming
4 that it is not feigned the more reason to escape, not less.

5 If the man is suffering from a serious illness he is
6 not likely to want to sit here and remain to face the
7 heavy penalties, life penalties, that may await him here
8 if he remains.

9 On the other side of that coin there is
10 certainly adequate medical facilities to take care of him
11 while he is incarcerated. Moreover, in view of the
12 Speedy Trial Act and the disposition of the members of
13 this Court to grant speedy trials long before the expira-
14 tion of the times required under the Speedy Trial Act,
15 there is not likely to be some history here of any long
16 confinement prior to trial.

17 The Court is not unmindful of the seriousness
18 of the narcotics problem to the City of New York, par-
19 ticularly in Harlem where this operation seems to have
20 had a severe impact, nor is the Court unmindful of the
21 fact that in large narcotics cases the experience in this
22 District has been dismal on the flight of defendants who
23 have been released often by the Court of Appeals after
24 the District Judge in the exercise of his wisdom decided
25 not to grant bail.

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2 I think in view of the likelihood that this
3 defendant can make the \$600,000 bail, in view of the
4 high risk, the extremely high risk, in view of his inter-
5 national connections, his age, his health, his obvious
6 ability to move about as he pleases, that there is a
7 substantial risk of flight and \$600,000 is not an unrea-
8 sonable bail.

9 Application denied.

10 MR. BROWN: If the Court please --
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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 - v s - : 76 Cr. 324

7 FRANK MOTEN, :

8 Defendant. :

9 -----x

10
11 B e f o r e :

12 HON. LLOYD F. MacMAHON,

13 District Judge.

14 New York, N.Y.

15 April 27, 1976 - 11:00 a.m.

16 A p p e a r a n c e s :

17 ROBERT B. FISKE, JR., ESQ.,

18 United States Attorney for the
Southern District of New York;

19 By: DANIEL BELLER, ESQ.,
Assistant United States Attorney.

20 ARNOLD E. BROWN, ESQ.,

21 Attorney for the Defendant.

22 Also Present:

23 LORENZO F. PADILLA, ESQ.

2 [Case called.]

3 MR. BELLER: The Government is ready, your
4 Honor.

5 MR. PADILLA: Your Honor, my name is Lorenzo
6 F. Padilla, 277 Broadway. I have just telephoned my
7 office and I am informed that Mr. Brown will be here
8 shortly. Mr. Brown is the attorney of record.

9 THE COURT: I am sorry. This Court is very
10 busy. We can't wait for Mr. Brown. I have other matters.
11 There is a jury waiting for me in another courtroom right
12 now.

13 MR. PADILLA: He is coming from New Jersey,
14 your Honor.

15 THE COURT: Mr. Brown will have to accomodate
16 the Court's convenience. You let the Clerk know when
17 everyone is here and I will try to get to the matter as
18 soon as I can.

19 MR. PADILLA: Yes, your Honor. I do want the
20 Court to know that he is not being neglectful. I brought
21 the papers over this morning and I did everything I could.

22 THE COURT: I will get to it as soon as I can.
23 That may be in a little while because I have other matters
24 going on.

25 [Pause.]

[Case called.]

MR. BELLER: The Government is ready, your Honor.

THE COURT: Proceed.

MR. BELLER: I believe this is a motion by the defendant Moten for rearargument of yesterday's denial of his motion to reduce bail for the defendant, Frank Moten. I received copies of the papers last night.

THE COURT: I deny rearargument. I just heard this matter fully yesterday. I don't intend to hear it again. I am not going to change my mind unless there has been some overwhelming circumstance that happened since yesterday afternoon at two o'clock.

MR. BROWN: Yes, your Honor. I didn't get an opportunity to address the Court with relationship to a certain document handed to the Court by Mr. Beller. I don't know what the document was.

Late yesterday after I served my moving papers Mr. Beller indicated he showed the Court some agent's report. I have no idea what that was.

THE COURT: It was report showing that they picked up policy slips in the laundromat.

MR. BROWN: If the Court please --

MR. BELLER: It's the defendant's house.

1 THE COURT: All right, the defendant's house.

2 MR. BROWN: Your Honor, the Court was of the
3 impression that I made a misrepresentation to the Court
4 and the Court really, I felt, disregarded everything I
5 said because the Court --

6 THE COURT: I didn't disregard everything you
7 said. My reasons for denying bail were crystal clear.
8 They are stated on the record. I wouldn't reduce that
9 bail one penny, not one penny in this kind of case.

10 MR. BROWN: I had made this statement that
11 there were no lottery slips found in the laundromat and
12 the Court asked me again was that so.

13 THE COURT: I was mistaken on the report. But
14 it was not a vital factor in my decision at all. Whether
15 he had a laundromat or whether he didn't, whether he was
16 in the policy business or whether he wasn't would not in
17 one way at all be determinative of my decision here at
18 all.

19 The nature of the crime, and for the obvious
20 reasons that I stated in the record, the man has assets.
21 He can make the bail, in my judgment, and, in any event,
22 if he can't he will get a speedy trial. That is all there
23 is to it. I will hear nothing further on the application.

24 Next case.

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MR. BROWN: May I ask the Court this --

THE COURT: Next case

Region	1990-1995	1996-2000	2001-2005
North America	1.2	1.5	1.8
Europe	1.1	1.4	1.7
Asia	1.0	1.3	1.6
Africa	0.9	1.2	1.5
South America	0.8	1.1	1.4
Oceania	0.7	1.0	1.3

2 MR. RICHMAN: The co-defendant is the person
3 named in Count 35, and released on \$1 thousand bail. I am
4 glad Mr. Beller brought that out, because I didn't feel I
5 had a right to.

6 Number two, my client does not know one of the
7 31 other defendants named in the indictment.

8 THE COURT: I am going to reduce the bail to
9 \$10 thousand.

10 MR. RICHMAN: Will you make that PRB?

11 THE COURT: No, I will make it cash or surety.

12 MR. RICHMAN: Thank you.

13 THE CLERK: Frank Moten.

14 MR. BROWN: If the Court please, my name is
15 Arnold Brown. I am an attorney from New Jersey, admitted
16 to the highest court in the State of New Jersey; also the
17 United States District Court in the District of New Jersey,
18 and also the United States Supreme Court. I ask leave of
19 the Court to make this application for a bail reduction in
20 behalf of Mr. Moten.

21 THE COURT: Very good.

22 MR. BROWN: If the Court please, the government
23 in this case has asked for a bail in the sum of \$1 million.

24 THE COURT: This is Mr. Moten? They have asked
25 for \$1 million bail?

2 MR. BROWN: That is the bail that was requested.
3 The magistrate set \$600 thousand bail in this case. Appli-
4 cation was made before Judge MacMahon, and he did not
5 disturb the finding of the magistrate.

6 I submit to the Court that a demand for \$600
7 thousand bail in this case is actually a denial of bail to
8 Mr. Moten.

9 THE COURT: Well, let me just turn the tables
10 here a little bit. Let me ask the government why, and give
11 a response.

12 MR. BROWN: Thank you very much.

13 THE COURT: That will give me a clearer picture,
14 I think, and faster.

15 MR. BELLER: Fine, your Honor. This defendant
16 is charged in Count 1, the conspiracy count, on which he
17 faces a penalty, if convicted, of 20 years.

18 His activity predates the May 1st, 1971 cutoff
19 date, so he is facing on the conspiracy charge 20 years in
20 jail, and a fine of \$25 thousand.

21 He is named as well in -- I don't have a copy
22 of the indictment before me, but I believe four substantive
23 counts. Penalty for each of which is 15 years and \$25 thousand
24 fine.

25 This defendant is, however, one of the two

Principal defendants in this case. He is named in Count 3, I believe it is, your Honor, with a violation of Title 21 United States Code, Section 848 which is commonly known as the life count.

He is charged with managing, organizing and supervising a continuing narcotics criminal enterprise from which I should point out the statute includes an element, he derived substantial sources of income. The penalty for that offense, if convicted, is life imprisonment. It is the maximum penalty.

THE COURT: Where is this?

MR. BELLER: Pardon me, your Honor.

THE COURT: Where is this?

MR. BELLER: I believe it is Count 3 or Count 4. I believe this defendant is named in Count 3. The penalty for conviction is life imprisonment, and a fine of \$100 thousand.

There is another defendant charged in this indictment with a similar violation, Juan Antonio Alvarez, whom the indictment alleges was the principal supplier of cocaine in this case.

Mr. Moten, I believe, is 54 years old. The government's evidence, I believe, will establish him to be most significant violator of the federal narcotics laws

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since the 1960's. For him, this is, in other words, a capital case, your Honor

Government. evidence will show that he both delivered narcotic drugs and that he financed the purchase of narcotic drugs on an enormous scale for the core individual in this case, and for several of the defendants who are charged in this case.

The government asked for a million dollars bail in this case. The magistrate initially set the bail at \$700 thousand. He then reduced the bail to \$600 thousand.

An application was made, a rather lengthy application was made before Judge MacMahon. Judge MacMahon kept the bail at \$600 thousand, and a second application, or a request for re-argument the following day, this past Tuesday was denied by Judge MacMahon.

The government has established that Mr. Moten has virtually unlimited resources available to him. In 1974, in December of 1974, pursuant to warrant, Mr. Brown has often referred to these as break-ins, these were searches conducted by authorized officials of the Internal Revenue Service, and New Jersey police officers, searches of a laundromat owned by Mr. Moten on Seventh Avenue, and of Mr. Moten's home, disclosed several items of particular interest and relevance to this application.

2 Mr. Moten's home there were disclosed policy
3 slips which were tabulated by an IRS audit to show that this
4 defendant earned in a period of 69 days the period covered
5 by the policy slips, in excess of a million dollars.

6 Mr. Moten, the government believes from this
7 one year alone, and from this one operation, earned in
8 excess of \$5 million in the year of 1974, solely from his
9 gambling operation in the New York area. This does not
10 include gambling operations of his in Cleveland, and in
11 Atlanta.

B5 12 I should point out at this time that this
13 defendant was indicted in 1974 and 1975 for conducting and
14 managing a gambling enterprise in Atlanta and I will get
15 to that in a moment. Also disclosed in Mr. Moten's home were
16 approximately \$136 thousand worth of stolen jewels and
17 other items. Items that have been seized by the government
18 in a search that has already been upheld by the base line
19 court in New Jersey.

20 In addition, he had \$12 thousand in cash and
21 some small amount of marijuana.

22 Safe deposit boxes of the defendant were seized,
23 one in Englewood, New Jersey, and one in Chemical Bank in
24 New York.

25 The Chemical Bank safe deposit box I am reading

1 here from a report in the newspaper. The safe deposit box
2 in the Englewood bank disclosed jewelry and other valuables
3 valued at \$172 thousand, including diamond rings valued at
4 \$121 thousand.
5

6 As a result of these seizures, the Internal
7 Revenue Service filed a jeopardy assessment against this
8 defendant based on earnings in excess of a million dollars,
9 and seized, attached the assets that he had at that time.

10 While Mr. Brown has previously alleged that
11 this is part of a scheme of harassment, he has neglected
12 in the past and I believe the government should point out,
13 that this assessment has been upheld by the District Court
14 in New Jersey.

15 I do want to hand up to your Honor a copy of
16 an article taken from the Bergen Record on June 13, 1975.

17 MR. BROWN: Your Honor please. I object unless
18 counsel shows it to me before showing it to the Court.

19 THE COURT: I will give it to you.

20 MR. BELLER: I believe counsel has seen it in
21 the past, your Honor. Your Honor, Mr. Moten lives in
22 Englewood Cliffs in what has been described to me by the
23 agents who were doing surveillance there as an estate. The
24 house is recessed from the road, he has substantial property
25 in one of the more expensive areas of the metropolitan area.

Suffice it to say that based on the information actually provable by the government, and I might point out that none of these matters form the basis of the proof in the grand jury with respect to the substantial sources of income required to be proved on the 848 count, suffice it to say that the government has substantial information that this defendant is in possession of really unlimited resources.

He has with respect to his prior record some arrests, he has a very old conviction involving an OPA matter which is really of trivial significance. He has, however, recently been arrested in Newark on a narcotics charge, but more importantly, your Honor, he was charged with managing a gambling enterprise in Atlanta.

In that case, he was charged with, I believe, 10 or more defendants. The case was set for trial in November, I believe, of this past year, 1975.

Two days, one or two days before the trial in this matter, I have checked with the Assistant who prosecuted the case, because Mr. Brown on a previous occasion told me it was not one or two days, but many, many days beforehand, one or two days before the start of that trial, Mr. Moten sent word to the Court in Atlanta that he was unable to appear.

He does suffer from an angina, he does have a

1 heart condition. It does not prevent him from going around,
2 doing his business on a daily basis. It did not prevent
3 him from being out of town on whatever business he is out
4 of town on at the time the warrants came down in this case.
5

6 The government's information is that shortly
7 before the trial, he simply stopped taking his pills for
8 angina and was unable actually to stand trial.

9 The Court in Atlanta did rule that he was
10 unable to stand trial based on letters sent by Mr. Moten's
11 doctors and a telephone communication from a third-party
12 doctor who did consult with Mr. Moten's doctors, speak
13 with Mr. Moten and then make a telephone call to the judge.

14 In any event, there is no question that having
15 stopped taking his pills, he was unable to stand trial.

16 I do want to point out, your Honor, however,
17 that all the defendants in that case were convicted. The
18 bulk of the proof in that case was against Mr. Moten. It
19 is fair to say that had he been present at the trial, he
20 would have been convicted as well.

21 In any event, that case is still pending against
22 him.

23 It is, however, not surprising that Mr. Moten
24 has no prior convictions. He is known to law enforcement
25 authorities not only as a major policy operator, gambler,

1 hbds

2 and a major narcotics violator, but also as a very important
3 and insidious corruptor of public officials and police
4 officers.

5 His closest associate, a bodyguard of his,
6 James Harding, was a former lieutenant in the police depart-
7 ment.

8 Mr. Harding was Mr. Moten's body guard after
9 leaving the police force. He is presently incarcerated.
10 He had been convicted on a case in New York. That case was
11 reversed on appeal. He was, however, I believe, convicted
12 in the Atlanta case.

13 In any event, he is presently incarcerated.

14 Mr. Moten has had extensive contacts with agents
15 of the Internal Revenue Service, with police officers. He
16 has had access to indictments. He has prior to their dis-
17 closure, suffice it again to say that the government's in-
18 formation is that he is a substantial corruptor of police
19 officials and political officials in the metropolitan area.

20 Finally, Mr. Moten is a known associate of three
21 particularly important narcotics violators, two of whom
22 are particularly important with respect to this application.
23 One of whom, Frank Mathews, who was, I think, at one time
24 released on a million dollars bail, Frank Mathews is presently
25 a federal narcotics fugitive.

2 He is also closely associated with Zack Robinson,
3 who was indicted in a recent case in the Southern District
4 of New York. Mr. Robinson has not been seen, and is believed
5 either to be a fugitive or to be dead.

. B6 6 Mr. Moten is also, intelligence information
7 discloses, associated with Nickey Barnes. Nickey Barnes
8 is well-known as perhaps the most prominent narcotics
9 violator, trafficker in the black community in Harlem and
10 in New York. Mr. Moten is the organizer and driving force
11 of what is called the Council of Twelve. The Council of
12 Twelve is an organization of highly placed organized crime
13 individuals who collectively make and attempt to make
14 controlling decisions for organized crime activity in Harlem.
15 Mr. Moten is known to be the leader and driving force of
16 that organization.

17 He is, your Honor, in short, a baron of organ-
18 ized crime. His tentacles of corruption and illegal
19 activity extend to all known forms of violations; gambling
20 violations, narcotics violations, corrupting public officials
21 and so on.

22 He is charged in this case with offenses which,
23 if convicted, assure him a life sentence.

24 The government believed that a million dollars
25 was reasonable under the circumstances, given his access

to enormous amounts of money, and I should also point out that he has substantial foreign interests.

He travels freely to South America, to Ghana, to Zaire. He has bank accounts in the Bahamas; he travels frequently to the Bahamas.

The government's information is that he also has bank accounts in Canada. He has a tremendous motive to flee in this case. He has the ability to flee, he has business interests and other interests in other countries. He has contacts in Spain and in other continents.

We believe he can easily make the bail and, again, I would like to point out to your Honor that the claim that defendant cannot make bail is one that has been heard before in this case.

Mr. Moten knows that if he does make bail, the government is going to ask for a nebbia hearing. He will have to disclose the source of his income. That is perhaps another problem, but it is a basis for counsel saying that a defendant cannot make bail when he can.

We believe we have established that he has the access to the funds required to make this bail, and we believe that nothing less than the bail that has already been set will assure his production.

THE COURT: All right. Yes, sir.

MR. BROWN: Your Honor, if the Court please, what the Court has heard is something similar to an Alice in Wonderland story. It is fictional. It is baseless in some respects, and in most respects, I submit to the Court.

First of all, your Honor, I think the main item that we ought to direct our attention to is the incentive to flee. Take everything that Mr. Beller says as true. Why would this man surrender himself? Why would he fall into the arms of the United States Marshal and surrender himself if he was facing what Mr. Beller says is the facts against him in this case?

I submit to the Court that Mr. Moten even after discussing with me the charges and having read the newspaper accounts, Mr. Moten would have taken off for the first boat out of this country. He would have fled then because that was his opportunity.

So really, your Honor, this man maintains his innocence. He is saying that what Mr. Beller is indicating to the Court is not true. It is not the fact, and that he surrendered himself. He wasn't arrested. He wasn't sought out and found in hiding. He came from wherever he was and met me here in Foley Square and we went to the U.S. Marshal's office.

Your Honor, I say that act on his part negates

any feeling on his part to flee. As Mr. Beller has indicated to the Court that Mr. Moten was indicted in the United States District Court in New Jersey for a drug conspiracy, that conspiracy covers a period of 33 months, that is encompassed by this indictment.

This indictment covers about 100 months, and that is a third of it. A substantial part of that indictment.

Mr. Moten faces substantial punishment if he is found guilty in that particular case. If he was found guilty in the Atlanta indictment which is a gambling conspiracy, he would face substantial imprisonment in that case.

I submit to your Honor, a man of his age, 54 years of age, a man with a heart condition, and the Court is familiar with life expectancy tables, this man would only have 20 years to live, and with a bad heart, it would be less than that.

The man is already facing a potential life sentence.

If he did not believe in his own innocence, he would have fled in those cases. Bail was set in Atlanta, I believe, at \$25 thousand and in Newark, New Jersey, set for 25 surety, and 25 personal bond.

1
2 I submit to the Court that Mr. Moten would have
3 long left this jurisdiction and this country if he had the
4 resources that Mr. Beller indicates he has. If he had
5 all the foreign influence and the investments he could live
6 like a king, your Honor.

7 I submit that is all fancy, because it is not
8 true. He doesn't have those things, and he has surrendered
9 himself to this jurisdiction for the purpose of having his
10 day in court, because he says that the indictment is not
11 true; that he is not guilty of the charges.

12 Now, if your Honor please, if we were to look
13 at the indictment we would find that there are a few key
14 people involved as far as the state's case is concerned.
15 That there are two main informants. One is an unindicted
16 co-conspirator named John Brown, also, I guess, alias Jack.
17 That man is known to our investigators at this early date,
18 and that man is a sick man, your Honor. He has been in
19 incarceration, he has surrendered himself, we believe, for
20 over a year in the government's custody, and I understand
21 recently, just recently, after over 10 months in custody,
22 he did make some incriminating statement. But this man,
23 who is an addict, your Honor, this man who is facing life
24 imprisonment, this man who is sick and is known to be a
25 pathological liar, your Honor, is the basis of the state's

1 hbds

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2 case.

3 Also, there is a Marion Ladd who is one of the
4 informants in the New Jersey indictment.

B7 5 Marion Ladd who has had 55 arrests, your Honor,
6 who has spent half of her life in jail, who is a paid in-
7 former, and has been a paid informer for many years, who
8 was a key witness this last December when she testified in
9 a case of 13 defendants in a drug conspiracy case, and the
10 jury found her testimony so unbelievable, so distasteful,
11 your Honor, that all 13 defendants were set free and acquitted

12 Your Honor, this is the kind of evidence that
13 Mr. Beller is coming into this court with to ask for a
14 million dollars bail? I submit to your Honor that our
15 defenses in this case are substantial and that Mr. Moten
16 is convinced that he is going to be acquitted of the charges
17 in this case.

18 Now, again, your Honor, the request for the
19 \$600 thousand or the million dollars bail is a real denial
20 of our constitutional rights. And the purpose of the 1966
21 Bail Reform was really to do away with what Mr. Beller is
22 asking this Court to do.

23 It was to look at certain items to determine
24 whether or not a man is bailable. Not a monetary bail, to
25 find out if his roots are in community, what kind of family

1 hbds

32

2 ties he has.

3 Just look at him not from the monetary stand-
4 point, but from an individual basis.

5 And I submit, your Honor, and the ABA standards
6 and all of the research done on the old bail system, we
7 should not go back here to that system.

8 To answer some of the things that Mr. Beller
9 has before I talk about Mr. Moten as a man, your Honor, it
10 is true that Mr. Moten's house was entered on the basis of
11 a warrant. A warrant obtained by perjured information in
12 the local magistrate's office. I am talking about State
13 Municipal Court and by federal standards, that warrant is
14 defective. That question has never come before a federal
15 Court and so the evidence and the materials obtained at that
16 warrant is not going to be available in this case or any
17 other federal case.

18 And what was found in Mr. Moten's house?

19 THE COURT: For the purposes of today's pro-
20 ceeding, I don't have any suppression question. It is
21 only a question of whether the information revealed as to
22 the defendant's assets are substantially as the government
23 has represented. It seems to me that is the question.

24 MR. BROWN: I am going to touch on that very
25 briefly, your Honor. What the government has a result of

1 that search, and I might say at this time nothing was
2 obtained from a search of the laundromat on Seventh Avenue,
3 New York City. Absolutely nothing incriminating at all.
4 In fact, Mr. Beller indicated to Judge MacMahon that he
5 had an agent's report, showed it to the judge, and the judge
6 thought that what was found at Mr. Moten's house was found
7 at the laundromat in New York City, and the Court felt that
8 I was making a misrepresentation to the Court. And
9 Mr. Beller, the next day, Mr. Beller indicated to the
10 Court that that was an error.

11
12 MR. BELLER: That is simply -- I will wait
13 until -- but it is simply not true, your Honor.

14 MR. BROWN: What was found in Mr. Moten's house
15 were some policy slips. Indicted in the New Jersey State
16 Court, was a Harold de Loche and Frank Moten for possession
17 of gambling paraphernalia.

18 Giving the government its best posture in that
19 case, your Honor, those slips were about to be flushed down
20 the toilet by Harold de Loche. Harold de Loche had possession
21 of those items. Harold de Loche signed a statement that
22 those are his items in his possession, not Mr. Moten.

23 So if we are talking about what posture do we
24 stand in this case, we have the statement from Mr. de Loche
25 saying that those documents, those items that do exist,

were in the hands of Mr. de Loche. Mr. de Loche says they were in his hands, and his handwriting, and belonged to him.

Mr. Moten, at that particular day, was at home in bed with a bad back and Mr. de Loche had to come and visit him.

Now, what did they take out of Mr. Moten's house, your Honor? Not \$136 thousand in stolen jewelry. That is not the case. The fact is, your Honor, that Mr. Moten has been indicted for receiving stolen goods allegedly less than \$10 thousand worth of goods taken from Mr. Moten's house is alleged to have been stolen. The remainder of the items in his house, the bulk of it in value was from his jewelry business. Mr. Moten is in the jewelry business.

He has been in the jewelry business for a couple of years. He derived his income from that business.

What the government has done, they have not indicted him on stolen jewelry, the bulk of that stolen jewelry.

As I indicated, it is only \$10 thousand worth of items which covers some jewelry and a fur coat, some personal belongings.

Now, what the government is trying to indicate

1 here, is that he has \$136 thousand in stolen goods which
2 is not so. They had seized that material. They have
3 refused to release it. It stands presently in the federal
4 warehouse in Newark, New Jersey. Mr. Moten has been
5 deprived of an opportuntiy to make his livelihood as a
6 result of that seizure, and nowhere, nowhere is that jewelry
7 related in any way to any gambling business, or any narcotic
8 business.
9

10 The government, Mr. Beller, is trying to indicate
11 to us that he had \$12 thousand in cash that day. If your
12 Honor please, I was at the Moten residence on that day and
13 I tender to the Court a copy of the inventory of that search,
14 and it showed a total cash of \$1,965. That is the total
15 cash, your Honor, not any \$12 thousand.

16 What Mr. Beller may be attempting to indicate
17 to the Court is that he had coins valued by an expert coin
18 collector. Mr. Moten has been a collector for years.
19 That it was valued at \$10 thousand, part of the overall
20 value of the statement. But he only had cash, your Honor,
21 or something of that in \$2 thousand.

22 MR. BELLER: May I see that affidavit?

23 MR. BROWN: What affidavit are you referring to?

24 MR. BELLER: The affidavit you were just
25 referring to. The inventory. May I see the inventory?

1 MR. BROWN: I also show you a valuation by one
2
3 of your agents as to items taken from the house.

4 If your Honor please, in spite of the monetary
5 valuation that was put on the things in Mr. Moten's house,
6 every asset that Mr. Moten owns, your Honor, his house,
7 his safe deposit box have been gleaned by the Internal
8 Revenue. They have been seized, and they are not available
9 to Mr. Moten as an asset, as a resource to make bail.

10 There is presently \$250 thousand assessment.
11 Just in court action in related action in New Jersey, a
12 hundred or \$150 thousand of that has been abated by the
13 Internal Revenue, as a result of court litigation.

14 There is part of an appeal on the tax lien be-
15 fore the Third Circuit relating to whether or not their
16 estimation, that is the Internal Revenue Service of 69 days
17 and a million dollars earned income, whether or not that
18 is capricious and arbitrary; and under the cases, the
19 Pizzarella case and some of the others, we maintain it was
20 an arbitrary assessment.

21 Second of all, it wasn't Mr. Moten who was
22 in possession of those items, but Mr. de Loche. The
23 Internal Revenue takes the position that what we should do
24 is pay the tax and file for a refund, and then go into
25 the Tax Court so when counsel indicates that the Court has

1 hbds
2 ap proved the lien and seizure, well, that is not quite so.
3 It is the technique and the method that you have to bring
4 the issue before the Court for a proper determination, and
5 that is what we are about.

6 Your Honor, the government, Mr. Beller here,
7 tries to assassinate the character of Mr. Moten by linking
8 him to people that he doesn't even know. Mr. Mathews
9 and Nickey Barnes. I mean, they are not in this case.
10 There is no evidence in this case that Mr. Moten is asso-
11 ciated in any way with them. But they are sinister people,
12 and he would like for us to be associated with them, so that
13 the Court would indicate that Mr. Moten is of like kind.

14 The statement that Mr. Moten is the head and
15 prime moving force behind some mythical Council of Twelve,
16 I don't see that anywhere in the indictment, your Honor.

17 THE COURT: Neither of these last two things
18 you talked about have to be in the indictment, and I haven't
19 heard you say anything, except that they weren't in the
20 indictment.

21 MR. BROWN: They are not true, our Honor. They
22 are all mythical, and there is no fact, there is no proof
23 at all, except the bare essential by the Assistant U.S.
24 Attorney that they are facts; and I would think he would
25 have to come forward with something more than an Alice in

Wonderland story.

He ought to show and demonstrate because it is not a fact, and how can Mr. Moten defend himself against something fictitious and fictional? It is just impossible. It is impossible.

If your Honor please, even the question of Mr. Moten's financial inability really should not come into play when asking for bail in this particular case. I have seen and heard and read about cases of men on Wall Street and fraud manipulations, etc., who come into this court, known millionaires and billionaires, and get released in their recognizance or paroled, as the term is used in this District.

Their assets and their great wealth has nothing to do with the question of whether one is going to return to the jurisdiction and subject himself to the jurisdiction for a case. And I maintain Mr. Moten, who is a family man, your Honor, married over 20 years, lives in Englewood, New Jersey, with his family, his three childre, has ties in the community. He has lived in New York and New Jersey for better than 30 years. His roots are deep in the community. His wife is here today to witness her support of her husband and her knowledge that he is innocent of the charges that he faces.

1
2 There are other members of the community in
3 the court to bespeak their support for Mr. Moten.

4 Your Honor please, Mr. Moten has been self-
5 employed over the years. His jewelry business, I indicated
6 to the Court, was confiscated by the government. Mr. Moten
7 is presently receiving disability payments, not only because
8 he doesn't have any business he can operate, but also be-
9 cause of health reasons.

10 I may direct the Court to the attention of the
11 extensive health problem that Mr. Moten does have. He does
12 have a heart disease, angina. He has been under a doctor's
13 care for several years. He has been under Dr. Gorham's
14 care and treatment, your Honor, since 1964 when he suffered
15 his first heart attack. He was hospitalized in New York
16 Hospital, and he was again hospitalized on the doctor's
17 behest, Dr. Gorham and Dr. Pritchard, his cardiologist in
18 the latter part of October; and I submit to the Court that
19 I was handling the Atlanta case, and a week before the case
20 came to trial, I got a call from the hospital of Mr. Moten
21 that he had been committed by his doctor, and I immediately
22 called the U.S. Assistant in Atlanta and also Judge Hill
23 who was the presiding judge in that case and informed him
24 immediately.

25 It was not one or two days prior to trial.

Whether or not the oncoming thought of the trial accelerated Mr. Moten's problem, I don't know. I am not a doctor, but I know this. That Dr. Gorham and Dr. Pritchard both indicated that his man was unfit to stand trial. We submitted Mr. Moten to the examination of any doctor that the government wished to examine Mr. Moten. Dr. Welsh, a known cardiologist in the New York area examined Mr. Moten, and independently he came to the same conclusion that this man was suffering with an acute angina, and that this man was not fit to stand trial in that case.

89 Your Honor, to have the government say that on their information, Mr. Moten stopped taking pills, I submit to the Court if it had been a fact, they would never know it. But the fact is, it never did occur. I think Mr. Moten's health is more important to him than standing trial for any case. There is no way for the Court to know whether or not Mr. Moten stopped taking pills, and I submit that is a theory of theirs, groundless and baseless.

Mr. Moten has appeared in all of his cases that he presently has, and they have been coming along since the search in September of 1974. He has appeared every time. Made every court appearance.

He is anxious, willing and ready to defend himself and his character and his reputation, your Honor.

1
2 There is no thought in his mind of fleeing
3 the jurisdiction, no thought of avoiding this contest that
4 is being brought about.

5 I submit if Mr. Moten is to continue in jail
6 and he will, if bail is continued at \$600 thousand, then
7 his health is going to deteriorate.

8 I got a call last night indicating that
9 Mr. Moten's blood pressure was getting low, that his pulse
10 rate was low, and that the physician at the correction
11 center had to change his medication, because he was con-
12 cerned about his condition.

13 I also say to the Court that Mr. Moten has to
14 defend himself on charges that span eight years, spans 33
15 persons.

16 There is no way that he can adequately prepare
17 his defense, assist me in preparing his defense while he
18 is incarcerated. That this man has got to be released in
19 a reasonable bail, so that he can defend himself. And the
20 Court may well be aware of the many studies that have gone
21 on that shows that people who are incarcerated and cannot
22 make bail, their chances of conviction are much greater than
23 those who are released.

24 And I submit to the Court this is one of the
25 reasons why Mr. Beller has asked for such a high bail.

2 I submit, your Honor, that under 3146 and
3 Title 18, Mr. Moten is entitled to be released in a reason-
4 able bail.

5 Thank you.

6 MR. BELLER: Your Honor, I just briefly want
7 to comment on some of the things Mr. Brown said. He does
8 often refer to roots in the community. It is, however,
9 conspicuous, the absence of any reference to Mr. Moten's
10 employment, his means of earning income. Conspicuously
11 absent.

12 Mr. Brown in this proceeding has attempted to
13 suggest in some way, it is not exactly clear, that Mr. Moten
14 still has some kind of an interest in a jewelry business.
15 I am not sure if that is what you are suggesting, at least
16 the previous appearances he has always claimed that it was
17 part of the government's harassment in seizing the stolen
18 jewelry in 1974 that has prevented Mr. Moten from earning
19 a living.

20 In any event, Mr. Brown did later on state that
21 Mr. Moten is presently unemployed and is receiving some sort
22 of compensation. He has no employment.

23 On the other hand, he continues to live a life
24 of luxury in Englewood Cliffs.

25 Mr. Brown states that Mr. Moten is not charged

1 for the stolen jewelry. It is simply false. He was charged
2 on October 11, 1974 with receiving stolen property by the
3 Englewood Police Department. Mr. Moten, without really
4 commenting seriously on Mr. Brown's claims with respect to
5 the witnesses in this case, it is curious that Mr. Brown
6 at least believes that he has information about the govern-
7 ment's informants in this case, when it is certainly not
8 a matter of public record and I know of no place where
9 Mr. Moten or Mr. Brown could have secured such information,
10 without commenting on whether it is true or not.

12 I do have some familiarity with the woman whom
13 he has mentioned, Marion Ladd. There is no reference to
14 her in this indictment. Marion Ladd did furnish information
15 which led to the arrest and the conviction of 27 narcotics
16 dealers. All of those cases were made in 1973 and 1974.
17 All of the individuals whom she gave us information with
18 respect to sold narcotics to undercover agents, and all of
19 them were convicted or pled guilty.

20 She did testify as one of approximately 30
21 witnesses in a most recent trial. That case did end in an
22 acquittal.

23 THE COURT: Let me just focus on four different
24 things. What were the effects of the Atlanta gambling case
25 in a nutshell, not in any extensive --

2 MR. BELLER: Mr. Moten was associated with an
3 individual named Ducky Moore, became indebted in some
4 fashion to Mr. Moten. Ducky Moore was sent to Atlanta to
5 operate a gambling concern that was controlled by Mr. Moten.

6 THE COURT: This is according to proof in the
7 trial?

8 MR. BELLER: I may be slightly misstating it.
9 It did have to do with Ducky Moore, who was the gentleman
10 living in Atlanta. It is not immediately clear to me
11 whether he went to Atlanta because he was indebted to
12 Mr. Moten or he became indebted to Mr. Moten.

13 In any event, proof showed that this gambling
14 operation which did include Ducky Moore and James Harding,
15 who was sent by Mr. Moten to take over the operation after
16 Ducky Moore got into some sort of trouble, that that opera-
17 tion was run by Mr. Moten.

18 THE COURT: What kind of money was involved in
19 that operation?

20 MR. BELLER: Again, millions of dollars worth
21 of policy plays. I should point out, your Honor, that
22 Ducky Moore was found as I understand it, Mr. Moore had
23 himself a penchant for gambling. He was siphoning some
24 funds off from the operation. Mr. Moore was found in
25 possession of a substantial amount of cocaine.

1 THE COURT: Let me not get into that. All I
2
3 want to find out is what kind of assets are available here.
4 You say the testimony in the Atlanta case showed that this
5 defendant was an operator in some measure of gambling
6 operation that was running substantial amounts of money?

7 MR. BELLER: Yes, your Honor.

8 THE COURT: How about the policy slips that were
9 found either at the laundromat or at the home as the case
10 may be?

11 MR. BELLER: Those were found in the home, your
12 Honor, and they were for 69 days which showed a total based
13 on the IRS audit to establish an average for each day which
14 was approximately \$16 thousand.

B10 15 THE COURT: On the basis of --

16 MR. BELLER: For 69 days, \$1,128,708.21 based
17 on 69 days and that was by the IRS, eliminating Sundays.

18 Just using the normal policy week, it is
19 approximately \$5 million a year, your Honor.

20 THE COURT: Now, what about this jewelry dis-
21 covered in safe deposit boxes?

22 MR. BELLER: Yes, your Honor. When I hand up
23 a copy of the Herald News, Thursday, May 29, 1975, which does
24 contain an account of the jewelry seized from Mr. Moten's
25 safe deposit box in Englewood, I was trying to reach the

agent today to get an exact figure. I know that both safe deposit boxes were attached, that subpoenas were served, one in December of '74 and the other in January of 1975.

THE COURT: In other words, the agents took 172 thousand from a New York bank, and 121 thousand from an Englewood bank in terms of the value of the merchandise in this safe deposit box?

MR. BELLER: Yes, your Honor, that is what it appears to say.

THE COURT: Now, one final thing. Is there any way that you could submit to me for my in camera inspection any support for the statements that Mr. Moten was associating with fugitives from other criminal indictments, and that he is the leader of the Council of Twelve in quotes?

MR. BELLER: Yes, I believe I can.

MR. BROWN: Your Honor.

THE COURT: Yes, sir.

MR. BROWN: I know it is getting late. I submit to the Court that the inventory of the safe deposit box in Englewood which I was there when it was taken, is rather inconsequential as to value. I don't believe the Internal Revenue Service has placed a value on those goods. I could certainly submit to the Court a list of that inventory.

I also appeared at the inventory of the safe deposit box in New York, and if the Court is willing, we would be more than happy to put up the entire contents of those two safe deposit boxes as collateral in this case. I submit to the Court that there is no substantial goods in those boxes.

THE COURT: As of this moment, I am going to leave the bail where it is, and I will appreciate receiving from you, Mr. Beller, that support for those statements.

MR. BELLER: Yes, your Honor.

THE COURT: And I may give further consideration after I have had a chance to look at it.

MR. BROWN: If your Honor please, would those statements be available to counsel?

THE COURT: I do not expect that they will be. All right. The bail will remain at \$600 thousand.

MR. BROWN: Would the Court give us a ruling in writing or orally?

THE COURT: There is a record being made of this which is your ruling in writing.

MR. BROWN: Wha. I am referring to, the actual reasons why bail --

THE COURT: I shall. I find that the nature of the charges are such that they are serious, that the

potential sentence in the event there were to be a conviction is so substantial as to create a great motive to flee.

I find that there is an ability to flee that is unusual. I am advised that there is an association with others in the criminal area, including those who have fled from prior criminal charges. That given the background here of extensive gambling, of possession of stolen jewelry in large amounts, that there is a potential, there is disclosed a probable possession of assets of an enormous amount; and based upon the foregoing as revealed to me on this argument, I find that this bail is entirely appropriate.

MR. BROWN: Ask the Court one thing. May I submit an inventory of the valuation of the assets that were seized by the government?

THE COURT: You may, with a copy to the government.

MR. BELLER: Would you also submit a copy of the inventory of the house? Is that what you are referring to?

MR. BROWN: Fine.

One thing for the record. May I make it clear that I objected to counsel showing the Court anything in camera as it does not allow the defendant the opportunity to refute it or disprove it in any way.

1
2 MR. BELLER: Your Honor, I would like to review
3 the information that I have in the office. As long as the
4 identity of informants is not disclosed, as long as there
5 is no important government purpose in not turning it over,
6 I will turn it over.

7 THE COURT: If you find you can't turn it over,
8 then don't turn it over to me. All right?

9 MR. BELLER: If I can't turn it over, then don't
10 turn it over.

11 THE COURT: Yes.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA :
 :
vs. : 76 Cr. 324
 :
FRANK MOTEN, :
 :
Defendant. :
----- x

BEFORE: HON. RICHARD OWEN, D. J.

NEW YORK, NEW YORK
May 25, 1976
2 p. m. - Room 301

APPEARANCES:

ROBERT B. FISKE, JR.,
United States Attorney
for the Government;
BY: DANIEL J. BELLER, ESQ.,
Assistant United States Attorney

NANCY ROSNER, ESQ.,
For the Defendant.

2 (Case Called.)

3 MRS. ROSNER: Your Honor, may I have just a
4 minute? I would like to read a little statement that the
5 defendant prepared for my edification concerning the circum-
6 stances on the surrender and I haven't completed it.

7 THE COURT: Why don't you do that there and
8 the minute you are through tell me.

9 MRS. ROSNER: Thank you, yo r Honor.

10 (Pause.)

11 MRS. ROSNER: I am ready, your Honor.

12 THE COURT: Now, I asked counsel here and Mrs.
13 Rosner asked if she could have the defendant here to give me
14 some guidance on only one fact matter which you have in your
15 papers and I considered them very carefully for several days.

16 I am troubled by the representation, Mrs. Rosner,
17 by the conflict between the representation in Mrs. Rosner's
18 papers that Mr. Moten "surrendered himself after being in-
19 formed of the charges without so much as a phone call to
20 attempt to negotiate a bail or otherwise reach an agreement
21 with the government regarding his surrender."

22 The government submitted a memorandum which was
23 not in affidavit form so I couldn't really conscientiously
24 rely on it, but the essence of that is that Mr. Moten to
25 their knowledge was somehow informed on Wednesday, April 21,

2 1976 that he was being sought on this indictment;

3 That at 11:30 in the morning of the next day,
4 April 22, some government lawyer received a call from his
5 lawyer in which Moten attempted to negotiate a bail and reach
6 an agreement concerning his surrender, which was not given any
7 consideration.

8 No negotiations were entered into by the govern-
9 ment and it was not until the following afternoon, Friday
10 afternoon, the 23rd after, according to the government, 24
11 hour surveillance by a half hundred federal and city law
12 enforcement at known hangouts that he finally surrendered
13 himself.

14 I would like to resolve that fact question. I
15 think it has some bearing upon what I am being asked to do
16 and not to do.

17 Mrs. Rosner, what is your understanding factually
18 of what happened here?

19 MRS. ROSNER: I have consulted with Mrs. Moten
20 who is present in the courtroom and Mr. Moten since both of
21 them have different areas of knowledge concerning this problem.

22 It seemed, your Honor, that on Wednesday which
23 was April 21, Mrs. Moten drove her daughter Dawn to school
24 early in the morning, approximately 8 a. m.

25 She observed two cars with what appeared to be

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2 police officers parked outside her home. One of them in fact
3 told her when she drove her daughter to school. She returned
4 to her residence at approximately 10 o'clock in the morning,
5 several agents, she estimates maybe 6 or 8, and when I say
6 agents I mean law enforcement personnel because they were
7 Englewood City Police such as Officer Crowley there as well.
8 They approached her home, knocked on the door and she spoke
9 with them and she asked what they wanted.

10 They said they were looking for Frank because
11 an Assistant United States Attorney wanted to speak to him.
12 She seemed to remember something about testifying before a
13 grand jury. She asked them whether they wanted to arrest
14 her husband and she said they were evasive, did not give her
15 a firm answer.

16 At the time she was speaking with the agents
17 Mr. Moten was on the phone from -- he was on the phone from
18 a place outside of the city where he was on business. That
19 was in Boston.

20 When he heard what was happening, one of his
21 daughters was on the phone listening with him, he asked if
22 they were agents. Some law enforcement personnel came into
23 his home, spoke with him on the phone in their bedroom and
24 told him that someone wanted to speak with him. He asked
25 specifically if they wanted to arrest him and he was informed

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at that time no, and was given a phone number and a name, he does not recollect the name. Mrs. Moten has it on a night table next to her bedroom and she believes it was an Assistant United States Attorney who Mr. Moten was told he should contact when he came back into the city. That was Wednesday morning.

The officers searched her home although she told them she didn't want it searched, without --

THE COURT: Let's go to the phone call of the next day so I can get that down.

MRS. ROSNER: Now, I don't believe that Mrs. Moten had any further contact with the agents on that date.

Mr. Moten called his attorney to inform him what had happened. The phone call made by Mr. Arnold Brown to Mr. Beller, Mr. Moten wasn't present for and Mrs. Moten wasn't present for and, Judge, I don't know the details of that conversation. Mr. Moten was not yet back in the city and I wasn't able to reach Mr. Brown this morning to get from him the details of that phone conversation so I will accept what Mr. Beller says on that score, I think he was the assistant who had that phone conversation, as correct.

THE COURT: All right.

MRS. ROSNER: Now, on Thursday evening I believe for the first time Mr. Moten learned that he was wanted not

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2 for merely questioning or to be spoken to but to be arrested.

3 MR. BELLER: I am sorry to interrupt Mrs. Rosner,
4 I believe that was Thursday.

5 MRS. ROSNER: Let me inquire so I am correct.

6 Thursday evening. By Thursday for the first
7 time he learned that the government wanted to arrest him.
8 He returned to the city Friday, made contact with his attorney,
9 Mr. Arnold Brown and presented himself to the marshal's
10 office here in the Southern District and was brought before
11 the Magistrate for arraignment.

12 Your Honor, to the best of my knowledge those
13 are all the facts and circumstances surrounding his arrest.

14 THE COURT: All right, Mr. Beller, what about
15 the phone call on the 22nd did you conduct that one?

16 MR. BELLER: Yes, your Honor, I received it.
17 Mr. Brown called me. He identified himself as Mr. Moten's
18 lawyer and I can't remember exactly the specific word for
19 word what he said but in substance he told me that he wanted
20 to make arrangements for the surrender of Mr. Moten and wanted
21 to discuss with me bail conditions. If we could discuss a
22 resolution of the bail issue before Mr. Moten surrendered.

23 I fortunately made notes of the phone call and
24 there was a witness present at the time. I told him that
25 we are not in the business of negotiating the surrender of

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2 anybody or negotiating bail as a condition for surrender.

3 I said would he tell me where Mr. Moten is.
4 He said, well, I would have to see and at that point he hung
5 up.

6 The next I believe I heard from Mr. Brown was
7 the following Friday at approximately, I think, around 2
8 o'clock, 1:30, when Mr. Moten surrendered.

9 THE COURT: Mrs. Rosner, do you think that you
10 are going to be able to controvert the substance of that
11 phone call?

12 MR. ROSNER: Controvert, you mean disapprove what
13 Mr. Beller is saying? I don't have a reason to believe that
14 Mr. Beller is falsifying, your Honor. I would like to point
15 out to the court that the substance of that phone call was
16 not made pursuant to my client's direction. Maybe Mr. Brown
17 thought he was doing something helpful but I might just
18 suggest anyone a little more familiar with this district and
19 particularly with the United States Attorney's office here,
20 would not have perhaps represented his client's position in
21 that way. I don't think that should be held against my
22 client, your Honor.

23 MR. BELLER: I would like to point out, I don't
24 think I said so, that the phone call came in 11:30 on April
25 22, 11:30 a. m.

2 THE COURT: Well unfortunately, Mrs. Rosner,
3 all I have to go on is the fact that the attorney for Mr.
4 Moten who did appear before me and appeared as his attorney,
5 made a call to the United States Attorney's office representing
6 himself as his attorney.

7 From the content of that phone call, it is the
8 inescapable conclusion that prior to making the phone call
9 the attorney Brown in Jersey knew that there was some charge
10 in the Southern District against your client which required
11 his surrender. So that in some fashion the counsel knew
12 about it on the morning, the early morning of Thursday the
13 22nd.

14 I must say that I must conclude that there is
15 proof before me that there was an awareness of Mr. Moten,
16 certainly the morning of the 22nd, that he was wanted for
17 surrender. It is not true, and I attribute this to a lack
18 of information on this subject, but it is not true and I am
19 required to find on this record that he did not surrender
20 without some phone call in an attempt to negotiate bail,
21 because I must find that when his attorney who later came in
22 and in fact called and tried to negotiate bail, then that
23 representation is inaccurate as I say because you were not in
24 the case. I don't attribute to you any such knowledge.

25 Then the fact of the matter is that some 30 odd

2 hours go by before your client does surrender. He does
3 surrender under circumstances where apparently there was an
4 enormous number of law officials posted at various prominent
5 places on the eastern seaboard.

6 I am afraid that on this record I do not find
7 anything in these instant papers to change my view as to
8 bail that has been set. The letters that I got from persons
9 as to his charitable contributions and so on, whatever they
10 may say, I don't find them terribly persuasive as to what
11 might or might not happen as far as the defendant showing up
12 to deal with these charges he is facing.

13 I am further impelled to the conclusion I reached
14 in maintaining the bail at its present figure of \$600,000 by
15 the fact that he did not come in when this was done. I must
16 say that one could draw the conclusion he was mulling over
17 what he was going to do --

18 MRS. ROSNER: May I be heard?

19 THE COURT: -- was a period of some 30 hours.

20 I will tell you another thing that bothers me.

21 Nobody at any time in any way, shape or form has given me
22 any information in any competent manner as to what this gentle-
23 man does for a living, how much money he makes, where he comes
24 from, how he spends it, where he banks. Normally in a bail
25 situation the defendant is willing to come in with some

2 substantial amount of information about assets and income and
3 jobs and how long he has held the job and wealth or lack of
4 it or what have you. I have absolutely no financial informa-
5 tion that would be expected on a bail application and this
6 is the third application -- the fourth one, one before the
7 Magistrate, one before Judge MacMahon and two before me and
8 this has never been furnished.

9 This suggests, I submit, a situation in the
10 defendant that the defendant for reasons of his own is unwill-
11 ing to make any such disclosure and such an attitude it seems
12 to me is inconsistent with the reduction of bail, given the
13 complete picture that I believe I have received earlier.

14 So now I will hear you before I firmly and
15 officially say that your application is denied. But those are
16 my conclusions from studying your papers, from clearing up this
17 one point on the surrender business. I don't see that I
18 really have any alternative given this whole situation.

19 MRS. ROSNER: I appreciate the opportunity to
20 be heard, your Honor.

21 May I point out to the court that facts often
22 are susceptible to more than one interpretation but the fact
23 is Mr. Moten was initially misled concerning what it was that
24 was wanted of him. He initially inquired, directly speaking
25 with agents on the phone whether they were going to arrest him

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2 and was told no.

3 THE COURT: I know but assuming this is true,
4 I don't for present purposes question the truth of that but
5 certainly by the next morning his lawyer was saying under what
6 circumstances can I surrender Mr. Moten in the Southern District
7 of New York. That is 30 hours before he in fact comes in.

8 Somebody told you I gather that was your client
9 or somebody else, told you that there never had been such a
10 phone call so that you could put it in there. That of course
11 is a modest misrepresentation through you to me which I am
12 not charging you with. Somebody told you to say that.

13 MRS. ROSNER: Well, first of all, the character
14 of that mis-statement was not intentional, that is just lack
15 of knowledge. I do not mean to say that your Honor was saying
16 that.

17 It wasn't 30 hours, Judge. Say at best the man
18 surrendered himself early Friday afternoon, he was out of the
19 city, he had to return to the jurisdiction to surrender.
20 When he had personal communication with some agents of the
21 government, they gave him a phone number to call when he
22 was ready to come back to surrender himself. He was put into
23 a frame of mind not to surrender. By making contact with the
24 name, that put him in the frame of mind to believe that there
25 was no great urgency about this.

2 THE COURT: What you understand from asking with
3 respect to the terms of surrender the day before? That is
4 an urgency, isn't it?

5 MRS. ROSNER: I believe Mr. Brown, and may I say
6 I'm not speaking of known facts, rather representing something
7 Mr. Brown told me personally, I believe Mr. Brown learned
8 that Mr. Moten was wanted on this indictment through Mrs.
9 Moten's contact with the agents before it was known to Mr.
10 Moten. I believe that was the first time he learned was
11 Thursday night, Judge, and he was in the Southern District
12 in the marshal's office Friday morning.

13 THE COURT: Mrs. Rosner, who did you ask to make
14 that statement that "He never made so much as a phone call
15 about negotiations." Who did you talk to?

16 MRS. ROSNER: My conversation was with Mr.
17 Moten. I don't believe --

18 THE COURT: Did you talk to Mr. Brown?

19 MRS. ROSNER: No, I did not.

20 THE COURT: All right.

21 MRS. ROSNER: When he first learned that he was
22 wanted Thursday evening he promptly returned to the juris-
23 diction the next morning. The figure 30 hours I believe
24 really does not represent an accurate construction of the
25 facts.

Furthermore, it was Friday afternoon and anyone who would had anticipated any problem with making bail would not come in Friday afternoon, Judge. Monday perhaps but not surrender on the evening of a weekend. It represents a state of mind.

There have been four occasions in the past when Mr. Moten had surrendered. In fact he informed me that I think Agent Gaffney informed him -- Agent Gaffney is one of the agents who is not in charge but prominent in this investigation -- Gaffney informed him prior to arrest that on any occasion when he was wanted, he would be informed and permitted to surrender.

He walked in here and anticipated that he was fully complying with whatever law enforcement demands were made of him to present himself, your Honor.

He presented himself not in any after-thought or after prolonged debate. He came in in the normal and regular practice whenever he was wanted and it wasn't a decision after some delay, a second thought or a choice between two different alternatives. He found out he was wanted and when he found out he returned as expeditiously as he could.

With respect to any resources, Judge, very frankly Mr. Moten's life and his employment and how he earns his

2 living is so well known to the government that perhaps all of
3 the data necessary has not been presented to the court. I
4 would be perfectly willing to supply the court with the tax
5 returns for every year which he had dutifully filed. He has
6 been self-employed as a jeweler. The substance of his in-
7 ventory and stock were seized by the government after a
8 revenue lien was placed on it which has really taken the bulk
9 of this man's assets and made him practically unemployable
10 and practically destroyed his business and his life.

11 The jewelry seized was not jewelry that his wife
12 was wearing. It was a quantity and inventory of uncut stones.
13 The man is in the jewelry business, your Honor, and that is
14 how he was employed until 1974 when the government seized
15 his means of income.

16 THE COURT: Mrs. Rosner, these are only factors
17 frankly that I find supporting the finding that I made the
18 other day. I am not passing upon these as a basis of sus-
19 taining the amount of bail, I am adding these to those of the
20 other day so even if I were to detract them I would not be
21 moved to change my position. They give support to it and I
22 must confess that earnest as you are, I draw entirely dif-
23 ferent conclusions from this phone call and the events of
24 April 22, 23 and 24 or whatever it is. So I deny your
25 application.

- - -

1 MR. BROWN: I object.

2 THE COURT: Sustain the objection.

3 Q Just to reiterate, when you made the NCIC
4 check of the 357 Magnum, what was the result?

5 A It came back on the serial number as a stolen weapon
6 from New Hampshire.

7 Q Also, Mr. Gaffney, you stated that you ob-
8 served other objects that were stolen in the house?

9 MR. BROWN: I object to the question. First
10 of all it is not what the witness testified to, and
11 secondly it is improper.

12 THE COURT: I will sustain the objection.

13 Q Did you make any observations of the objects
14 that you haven't testified to previously?

15 A Yes, one object.

16 MR. BROWN: I am going to object if these
17 objects are not the objects that are contained in
18 the inventory attached to this search.

19 THE COURT: I don't know what he is going to
20 say.

21 MR. BROWN: That is the problem.

22 THE COURT: You can move to strike the answer.
23 Proceed.

24 THE WITNESS: Yes, your Honor. There was a
25 bracelet contained in the jewelry which is on the

search warrant which we have subsequently identified as being stolen in a burglary in Washington, D.C.

Q Was there a name on the bracelet?

MR. BROWN: I object and ask the Court to strike that last statement that Mr. Gaffney said because we are concerned about those items that appear on this inventory.

THE COURT: This is not on this inventory?

MR. BROWN: What he answered as the question I don't believe so.

Q Is it on the inventory?

A The jewelry was all inventoried. It was a handwritten inventory of the jewelry.

MR. BROWN: Will you describe that item?

MR. BYER: I am doing the examination now.

MR. BROWN: I have a motion to strike his testimony.

THE COURT: Let me hear it first. I will reserve you the right to strike.

MR. BROWN: I would like not to get off the subject.

THE COURT: Yes. Stay on the bracelet.

Q Did you make any observation of the bracelet?

A Yes. The bracelet contained numerous charms which were highly personalized, one with the name of the individual.

Gaffney -redirect

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Q You remember what that individual's name was?

A Could I refer to a note that I made?

THE COURT: Yes.

A The name on the bracelet was that of Gloria Diane Carey (phonetic).

Q Is there any other thing of importance on that charm bracelet?

A Yes. There was a charm indicating the woman is president of the American Dental Association. There were charms with names of other people and birthdates and also there was a sorority charm and a Phi Beta Kappa charm on it.

MR. BYER: That is all I have.

MR. BROWN: I move to strike every bit of that testimony as it does not appear on the inventory submitted to Mr. and Mrs. Frank Moten and that which is attached to the return. I cannot find it anywhere on the return and I ask that it be stricken.

MR. BYER: Perhaps if Mr. Gaffney is given an opportunity to look at the inventory.

THE COURT: Look at the inventory. Can you find the charm bracelet?

THE WITNESS: That is the way it is listed as a charm bracelet but I am unable to find it.

MR. BROWN: Your Honor, it does not appear on the return and I move that his testimony be stricken.

1 THE COURT: When did you pick up that charm
2 bracelet?

3 THE WITNESS: We picked it up the evening at
4 the scene, the scene in Mr. Moten's house.

5 THE COURT: Did you neglect to put it on the
6 return?

7 THE WITNESS: There was a bag which contained
8 numerous gold items and this is handwritten, so it
9 difficult to read but there was an itemized list which
10 I believe Mr. Brown certified to that anything that we
11 took was itemized.

MR. BROWN: There is no indication of that
bracelet as testified to by Mr. Gaffney and I submit
there was no such bracelet, that you ought to strike
it.

THE COURT: Not at this time. I will take it
under consideration.

MR. BROWN: I have some questions.

THE COURT: Go ahead.

RE CROSS-EXAMINATION BY MR. BROWN:

Q Who prepared this inventory and I am talking
now about the jewelry?

A The individual
who initialed it at the top.

Q Who is that individual?

A I am not aware of whose initials those are.

Q He is an F.B.I. agent, isn't he?

A O.K. It is Dennis O'Sullivan.

Q Dennis O'Sullivan?

A Yes, and he is an F.B.I. agent.

Q He wrote the inventory out?

A Yes, he did.

Q Is that his handwriting?

A That I am not aware of but those are his initials.

Q Did he supervise the inventory?

A He supervised one phase of the inventory, I believe.

Q The inventory relating to the jewelry, did he or did he not supervise?

A Yes, he did.

Q You have perused that inventory and you yourself cannot find a gold bracelet; isn't that correct?

A That is correct.

Q Has a complaint been filed against Mr. Moten for being in possession of a stolen gold bracelet charm?

A No, it has not.

MR. BROWN: I have no further questions.

MR. BYER: M.

BY MR. BYER:

Q Mr. Gaffney, the F.B.I. have certain jurisdictional requirements before they can file complaints for



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

GEORGE W. MILLER
ASSEMBLYMAN 71ST DISTRICT
NEW YORK COUNTY
25 WEST 132ND STREET
NEW YORK, NEW YORK 10037

CHAIRMAN
SOCIAL SERVICES COMMITTEE

May, 5, 1976

HON. RICHARD OWEN,
Judge, United States District Court
United States District Courthouse
Foley Square
New York, New York, 10007

RE: Frank Moten
76 Cr. 14

Dear Judge OWENS,

This communication is transmitted to your Honor in behalf of the above captioned, for the purpose of soliciting a favorable review of release pending trial.

I am personally familiar with the subject for many years and, particularly familiar with the subject's struggle with the Justice Department, now for a period exceeding one year. I became involved in the situation upon receiving complaints from my constituents about overly armed Federal Officers terrifying law abiding Blackcitizens within one block from my district clubhouse.

I protested the misbehavior to the Justice Departments' headquarters in Washington, D.C. I shall always be available to protest such conduct.

As a result of my involvement in the protest I became very familiar with the subject, Frank Moten. I found him to be a very esteemed person by all the citizens in my district and, many socio-political organizations, such as, N A A C P, Urban League, and the Harlem Businessmen Association. Mr. Moten's reputation amongst all, was excellent, for his kind and generous support.

I also became known to and familiar with Mr. Moten's family in Englewood, New Jersey, through many social visits.

From all of the above I, can safely attest to Mr. Moten's roots in the community. Likewise I can represent to your Honor that, Mr. Moten is a safe risk for release pending trial, to assist in the preparation of his defense.

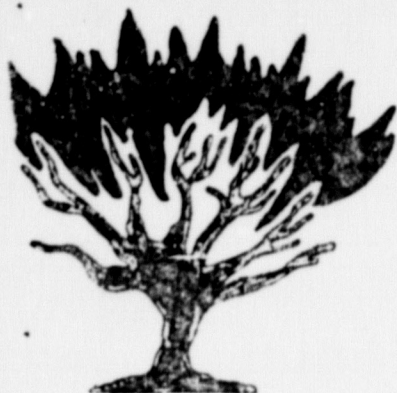
Trusting your Honor's kind attention in this matter, I close, remaining:

Respectfully yours,

George W. Miller
GEORGE W. MILLER

GWM/mh

Letters in support of application
to reduce bail. Exhibit B.



church of the master

The United Presbyterian Church in the U.S.A.

86 Morningside Avenue, New York, New York 10027
Telephone: (212) 666-8200 / The Rev. Eugene S. Callender, D.D., Pastor

May 6, 1976

"Burned, But Not Consumed"

Honorable Richard Owen,
U. S. District Court,
Southern District of New York
New York City.

Dear Judge:

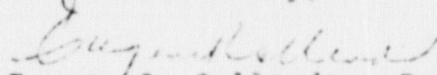
I am appealing to you in behalf of Mr. Frank Moten who is in the Federal House of Detention because of his inability to raise bail set at \$600,000 by the arraignment judge. I understand that an appeal to the Court seeking to reduce the bail was denied and that he is asking for a reconsideration. It is my hope and prayer that his request for a reduction will be considered favorably.

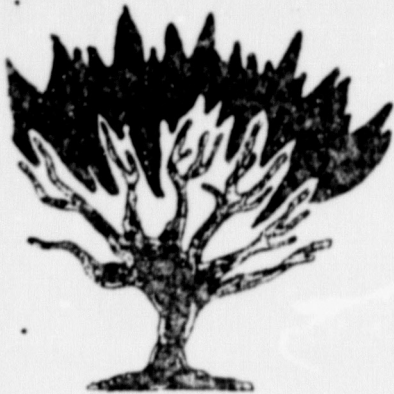
It has been my privilege to have known Mr. Moten over the years as one dedicated to his family, his community and his Country.. He is a kind-hearted man who has contributed his money, time and talent to help those worthwhile causes that needed help. You won't find anyone in the community to truthfully tell you differently. It would be a distinct surprise to all of us in the community if Mr. Moten is convicted of the crimes with which he is charged. When I served as Chairman of HARYOU-ACT, the nation's largest anti-poverty program, and later as Executive Director of the New York Urban League, and President of the New York Urban Coalition, I found Mr. Moten very energetic on behalf of these organizations, and always willing to make contributions when necessary.

Our church would be willing to be personally responsible for his appearances in court when required if you would release him to the custody of our church. His family and the community need him and his detention at this time on exorbitant bail is serving no useful purpose and is unconscionable.

With deep respect, I am

Most sincerely,


Eugene S. Callender, D. D.
Pastor



church of the master

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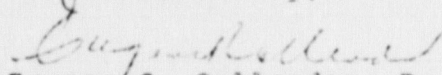
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Eugene S. Callender, D. D.
Pastor

THE BAPTIST MONTHLY MAGAZINE, INC.

A PUBLICATION TO MATCH THESE TIMES

18 WEST 123RD STREET

212 - 876-2399

NEW YORK, NEW YORK 10027

DAVID N. LICORISH

Editor & Publisher

May 6, 1976

Honorable Richard Owen,
Judge,
United States District Court,
Foley Square
New York, N. Y.

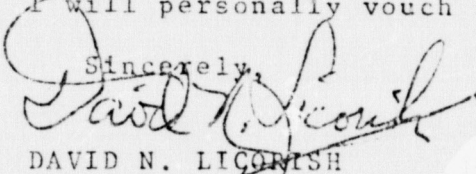
Dear Judge Owen:

Many friends of Frank Moten have urged me to intercede in his behalf and write to you with respect to a reduction of his bail which is holding him in the Federal House of Detention while awaiting trial. I count myself among Mr. Moten's friends, and I am happy to write this letter in his behalf.

The magazine which I edit and publish - THE BAPTIST - is supported entirely by contributions and what little is received from advertising. Mr. Moten has always heeded our appeals for financial support, and that of the churches with which I have been affiliated, particularly the Abyssinian Baptist Church, which was pastored so long by the late Congressman Adam Clayton Powell, and which I had the privilege of serving as Associate Minister for many years prior to his death and my retirement.

It appears to me that a bail of \$600,000 for a man of his background and community roots is the same as no bail, because I don't believe he could ever raise it. His friends, I among them, are willing to try to help him make reasonable bail, and I would hope that you can see your way clear as a humanitarian gesture, to reduce it to an amount that can be raised. As a matter of fact, I don't see why any bail should be set at all, because there can be no doubt that when his presence in court is required, he will be there ahead of time. He contends that he is innocent of the charges against him, and I believe that he is, and I can assure you, sir, that with the family he has to which he is completely devoted, he isn't about to jump bail. I will personally vouch for that.

Sincerely,


DAVID N. LICORISH
Editor and Publisher



**Ethiopian Orthodox Coptic Church
of North and South America**

2293 BEDFORD AVENUE

BOX 126

BROOKLYN, NEW YORK 11226



Most Reverend Abuna Gabre Kristos Mikael

B.Sc., B.D., M.R.E., D.D.

Nebura-Id and Primate-Apostolicos

TO WHOM IT MAY CONCERN:

RE: MR. FRANK MOTEN

WE WISH BY THESE PRESENTS TO UNRESERVEDLY RECOMMEND THE PERSON AND CHARACTER OF MR. FRANK MOTEN, A LONG-TIME RESIDENT AND CITIZEN OF THE CITY AND STATE OF NEW YORK. IN THE COMMUNITY OF HARLEM WHERE HE IS BEST KNOWN, HE HAS EXEMPLIFIED HIS CARE FOR HIS COMMUNITY BY HIS MANY CONTRIBUTIONS TO OUR INSTITUTIONS, AND INDIVIDUALS WHO HAVE NEEDED HIS HELP AND SUPPORT.

IT IS OUR PURPOSE IN THIS COMMUNICATION TO OFFER OUR ASSISTANCE AT A TIME WHEN HE NEEDS IT. WE CANNOT FORGET HIM IN THIS HIS HOUR OF NEED NOR SHALL WE FAIL HIM; THEREFORE, LET IT BE KNOWN THAT WE ARE GRAVELY CONCERNED ABOUT THE CURRENT ISSUES INVOLVING HIS PERSONAGE, AND WE ARE HEREBY AND HEREIN ANNOUNCING OUR DEFENSE AND SUPPORT, AND WE SOLICIT YOURS.

GIVEN IN THE NAME OF CHRIST,

JESUS, THE SAVIOUR AND REDEEMER

OF US ALL,

G. K. Mikael DD.
Most Rev. Abuna Gabre K. Mikael, DD
Metropolitan-Archbishop
Primate-Apostolicos

May, 7, 1976



AFRO-AMERICAN DAY, Inc.
UNITED FEDERATION OF BLACK COMMUNITY ORGANIZATIONS

2315 SEVENTH AVENUE, NEW YORK, N. Y. 10030

Tel.: 368-1100 - 1

Annual African-American Parade
"Day of Black Unity"

May 11, 1976

RAND MARSHAL
DEPUTY MAYOR PAUL GIBSON

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Congressman Charles Rangel
Borough President Percy Sutton

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Congresswoman Shirley Chisholm
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Marshall England
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Senator Joseph Galiber
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Vernon Jordan
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Floyd McKissick
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Commissioner Eleanor Norton
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Councilwoman Mary Pinkett
Commissioner Lucille Rose
Councilman Fred Samuels
Assemblyman Mark T. Southall
Councilman Archie Spigner
Gloria Thomas
Senator Sidney Von Luther
Rev. Wyatt T. Walker
Dr. Benjamin Watkins
Judge James L. Watson
Roy Wilkins
Councilman Sam Wright

(list incomplete)

Hon. Richard Owen
United States District Judge
U.S. District Court
Southern District of New York
New York, New York

Re: Frank Moten-reduction of bail

Dear Sir:

I am writing this letter to you on behalf of Frank Moten, a friend and outstanding businessman in Harlem.

I have known Mr. Moten for over 10 years, during that time he has shown nothing but outstanding business ethics. He has proven himself in the Harlem community by supporting the NAACP, New York Urban League, YMCA, and various other organizations and worthwhile groups.

I feel it is very unfair and unjust that Mr. Moten be detained any longer. With all due consideration to Mr. Moten and his family a fair and just bail, that could be raised by Mr. Moten and family and friends at this present time would be a humanitarian gesture.

Yours truly,

Abdel Krim

Abdel Krim, President
Afro-American Day, Inc.

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STATLER-HILTON HOTEL *New York, N.Y. 10001* (212) 564-5284

May 5, 1976

Hon. Richard Owen
United States District Judge
U.S. District Court
Southern District of New York
New York, New York

Dear Sir:

I am a partner in the firm of Colby, Miller, Fox & Shatz and have been a practicing attorney for the past twenty-four years. I was admitted to practice in the State of New York, First Judicial Department, in June, 1952 and I am admitted to practice in the United States District Court of New York, in the Southern and Eastern Districts. I am a member in good standing of the New York and Nassau County Bar Associations.

I first met Frank Moten approximately fifteen years ago when I was retained by him, through the introduction of a mutual friend, to represent Mr. Moten in the acquisition of a business property. In the past fifteen years I have represented Mr. Moten in innumerable business matters, during which time our relationship has developed into an intimate friendship. I am proud of my friendship with Frank Moten. As a result of our friendship our families have come to know each other. We have vacationed together and we like each other.

During the course of my relationship with Frank Moten we have on several occasions been business associates in ventures which required our travelling extensively together. On two occasions Frank Moten and I travelled to Ghana in West Africa, in the course of which, we have been the guests of the Ghanaian head of State, the Minister of Foreign Affairs, as well as the Chief of the Ashanti Tribe.

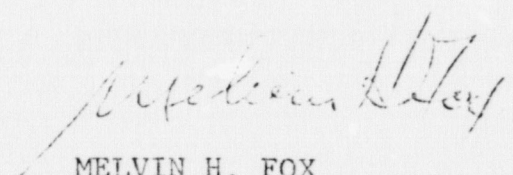
I have never known Frank Moten to be other than a responsible and respectable businessman. I have yet to meet anyone in any area of my association with Frank Moten who did not like him or respect him. I have never known Frank Moten to take advantage of anyone or to even suggest less than fair dealing with anyone. On the contrary, if ever a loss stood to be borne, it was

Hon. Richard Owen
May 5, 1976
Page 2

Frank Moten who took it. He is a genuinely unselfish and compassionate man. Although I do not know him as a religious man, I have seen him exhibit his generosity to any number of community religious groups and religious leaders.

I have never known Frank Moten to espouse injustice to anyone in any circumstance. It is only fitting that injustice not be visited upon him in his moment of need. I respectfully suggest to Your Honor that Frank Moten and his family should be spared the indignity and hardship of his further detention. Without reservation or hesitation, I respectfully offer to accept responsibility of having Frank Moten paroled in my custody, with my assurance to this Court that I will remain in regular contact and communication with him during such period of parole.

Respectfully yours,


MELVIN H. FOX

MHF:DG

PUBLIC RELATIONS ENTERPRISES, INC.

527 Madison Avenue
New York, N. Y. 10022

FREDERICK S. WEAVER
CHAIRMAN

May 5, 1976

(212) 355-4740

The Honorable Richard Owen,
United States District Court,
Southern District of New York
Foley Square,
New York, N. Y.

Re: Frank Moten's Application
for reduction of bail

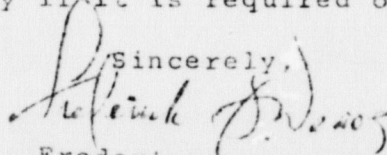
Dear Judge Owen:

I understand that Mr. Frank Moten has made or will be making a motion to have his application for reduction of bail reconsidered, his previous application having been denied. This letter is written to you in support of his new application.

I have known Mr. Moten and his family for nearly 20 years, and as a matter of fact, we have become very good personal and social friends. In all the years I have known him I have never believed nor suspected that he was then or ever had been involved in the charges which are pending against him in the Federal Court. I believe that he will be vindicated after trial, and that pending trial he should be released on his own recognizance, or at least have bail set in a reasonable and a less oppressive amount. Your Honor well knows that the purpose of bail is to assure the presence of a defendant in Court when that presence is required. I am so certain that Frank Moten will not skip bail that I am personally willing to be a surety on his bond if reasonable bail is fixed.

Mr. Moten has been a solid citizen in Harlem where his business is located, and in Englewood, N. J. where he lives with his family. He has been an ardent financial supporter of such organizations as the NAACP, the New York Urban League, the YMCA, and various summer camps for underprivileged children. He is a devoted father and husband, and his integrity wouldn't permit him to run out on his friends upon whom he would have to depend to make bail.

Likewise, I like to think that I too am a solid citizen. I have been honored by two Presidents who named me Recorder of Deeds for the District of Columbia; by the Mayor of New York City who appointed me Commissioner of Housing for the City of New York. I now own and conduct my own business from the above address and have been in the public relations profession since 1947. I am willing to back up this letter with oral testimony if it is required or felt necessary.

Sincerely,

Frederick S. Weaver

the center for open education

May 6, 1976

Honorable Judge D. Owens

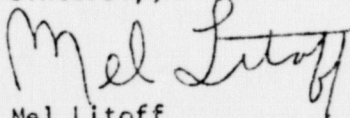
Dear Judge Owens:

We have been asked to prepare an evaluation of our school experience with the Moten family for your information. During the past five years we at The Center for Open Education have had substantial contact with each of the Moten children and Mrs. Moten. Frank and Nancy are currently students at the school and Dawn, who was a student, has now been graduated from high school. Both children currently in attendance are bright, warm, active and energetic students and young people.

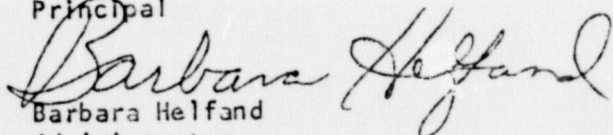
As with all families there are a variety of different needs for each child. Nancy is extraordinarily bright; Frank needs some supportive instruction, and Dawn needs a more structured school situation. In each case we have found the Moten family to be extraordinarily cooperative and supportive of their children's needs, immediately attentive to our recommendations, and totally committed to their children's educational growth. As a family they have been involved in helping the school to grow. Mrs. Moten has volunteered her help to chair a parent resource committee and has been an active, supportive parent.

In conclusion, our experience with the Moten family has been exemplary.

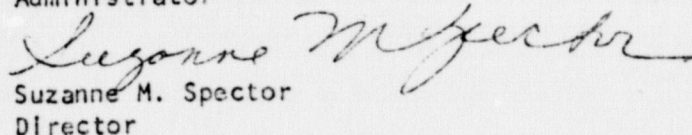
Sincerely,



Mel Litoff
Principal



Barbara Helfand
Administrator



Suzanne M. Spector
Director

jb

38 franklin street, tenafly, new jersey 07670

May 10, 1976

Hon. Richard Owens
U. S. District Court
Southern District of New York
New York, New York

Dear Judge Owens:

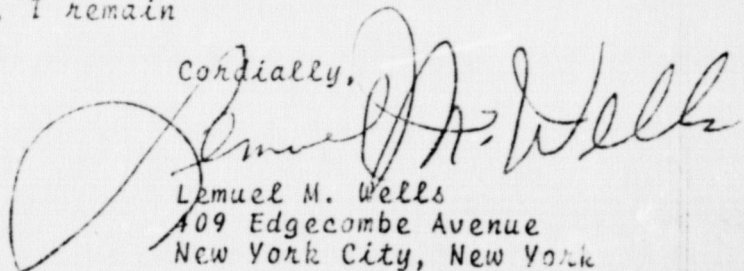
I am writing you in regards to a very good friend of mine, Mr. Frank Moten. I have known him for many years and, in my opinion, he has been a dedicated champion of civil rights for all citizens as well as an outstanding citizen.

I respectfully request of you that Mr. Moten's bail, which in my opinion is excessively high, be substantially reduced.

Thank you very much.

With warm best wishes, I remain

Cordially,

A large, stylized handwritten signature in dark ink, appearing to read 'Lemuel M. Wells'. The signature is fluid and cursive, with a large loop at the beginning and end.

Lemuel M. Wells
409 Edgecombe Avenue
New York City, New York

May 5, 1976

Honorable Richard Owens
U.S. District Judge
Southern District of New York

Dear Sir:

My name is Edward Lissner and I have resided at Highland Avenue, Great Neck, N.Y., for the past 13 years, with my wife, son & daughter, in my own home. I have been self-employed all of my adult life. I had for almost 20 years owned and operated food establishments. For the past six years I have been involved with a partnership, H & E Trading Co., manufacturers and importers of giftware. H & E exhibits at all the major gift shows throughout the country as well as most of the regional trade shows in the U.S.A. H & E has a factory in Farmingdale, N.Y.

I have known Frank Moten for about 25 years. During all this time, our friendship has been a sincere and honest one. I find it incredible that the allegations made against him could be true.

He is a good father, husband and family man, who takes pride in his three children, especially his young son. - I can not conceive, that if he were released on bail, that he would become a fugitive from justice.

Frank Moten is a kind man, when he was hospitalized with the loss of sight in one eye, I visited him in the hospital. This man was concerned for several youngsters who were also hospitalized with eye problems. He asked his wife, Sarah to buy small toys for them, because they had no visitors. On a subsequent visit to the hospital I witnessed the joy that these youngsters had experienced. These are the kind of things that through the years I had seen. Frank Moten giving an elderly lady money to pay her rent and put food on her table.

Your honor, I am 51 years of age, city bred and raised. In that span of time, one establishes criteria for the judgement of the people around him.

- 3 -

My judgement of Frank Molen is that he
is not the kind of individual who would be
involved and guilty of allegations made against him.

Sincerely Yours.
Edward Lissner

Sanfred FURNITURE FACTORIES

225 EAST 120TH STREET • NEW YORK, N.Y. 10035 • SA 2-3060 • SA 2-1769

May 5, 1976

To Whom It May Concern:

This company has been in the furniture business for over thirty years. We have been doing business with Frank Moten, now of Englewood Cliffs, N. J., for the last fifteen years, during which time we have gotten to know him well in a personal relationship too.

Mr. Moten has often recommended other customers to us, even at times bringing them in himself. He has gone out of his way to be helpful. An associate of ours, Ralph Romondo, had a mongoloid child, and we know that Mr. Moten helped him financially.

When we were in Mr. Moten's home, we always found him to be an excellent host. He impressed us as being a respectable family man, deeply in love with his wife and children, and we are certain he would not abandon his family by becoming a fugitive.

We are so sure of Mr. Moten's good character that if it is within our means, we would ourselves put up bail for him.

Very truly yours,

SANFRED FURNITURE FACTORIES

by *John Simone*



Charles A. Vincent
President & Treasurer

John W. Potter, Jr.
Vice President & Secretary

Vivien J. Doldron
Assistant Secretary

Members:
Eva E. Jans
Frank S. Folk, M.D.
James E. Blakely

May 13, 1976

To Whom It May Concern:

Re: Frank Moten

Gentlemen:

I am one of the interested citizens requesting that the bail of Frank Moten be reconsidered and reduced, inasmuch as I feel it is extremely exorbitant. For the bail to be reduced substantially would not jeopardize the appearance of Mr. Moten, nor in any way cause the community any disservice, assuming that lower bail was given and Mr. Moten was released.

This request, on my part, in behalf of Mr. Moten, does not in any way question the guilt or innocence of Frank Moten, which must be determined through the regular legal process of a trial.

Very truly yours,

Charles A. Vincent
Charles A. Vincent
President

CAV:vjd

Jack and Jill of America, Inc.

EASTERN REGION

REGIONAL OFFICERS

Director

Mrs. Lydia W. Brown
383 Knickerbocker Rd.
Englewood, New Jersey 07631

Secretary-Treasurer

Mrs. Elizabeth G. Williams
7135 Lincoln Drive
Phila., Pa. 19119

REGIONAL CHAPTERS

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Baltimore, Md.
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Buffalo, N.Y.
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Stamford-Norwalk, Conn.
Suffolk County, N.Y.
Tri-County, N.Y.
Washington, D.C.
Westchester County, N.Y.
Wilmington, Del.

May 19, 1976

United States District Court for
The Southern District of New York

Dear Sir:

Mr. and Mrs. Frank Moten participated as active members of the Bergen Passaic Chapter of Jack and Jill of America, Inc. when I served as Chapter president. The entire family exemplified impeccable characteristics. It is certainly my pleasure to say what a fine honorable individual Mr. Frank Moten has always been. Mr. Moten has always been helpful and encouraging in our endeavors. Even though Mr. Moten was quite busy, he always had time to cooperate with civic organizations.

You may wish to read more about Jack and Jill of America, Inc. and its purposes, therefore, I have enclosed one of our position papers.

We have always felt that the Frank Moten family was an asset to the group.

In my opinion, having known Frank Moten for over 10 years, that Frank Moten would be responsible for any and all obligations to the United States District Court for appearances and otherwise.

Respectfully,

Lydia W. Brown
(Mrs.) Lydia W. Brown

JACK AND JILL OF AMERICA, INCORPORATED

This non-profit service organization dedicated to the interest of children was founded in Philadelphia in January 1938. In 1946, the National Organization was incorporated under the laws of the State of Delaware. Chapters have sprung up through the years across the entire United States, now boasting 133 Chapters as of July, 1974.

Through the years the organization had National service projects to which it made large contributions, such as:

- . Research for Rheumatic Fever
- . National Foundation for Infantile Paralysis
- . Mental Illness and Other Charities
- . Mental Health for Children
- . NAACP - Legal Defense Fund

In 1966, the organization created its own Jack and Jill of America Foundation, incorporated in Cook County, State of Illinois in 1968, which is its national service arm. The Foundation has been responsible for the origin and funding of a large number of projects benefiting the young. Aside from Foundation, the Chapters themselves are responsible for service projects in their own communities.

The organization has specific objects and aims:

- (1) To create a medium of contact for children which will stimulate growth and development and to provide for them a constructive educational, cultural, civic, recreational and social program.
- (2) To aid mothers in learning more about their children by careful study.
- (3) To seek for all children the same advantages which we desire for our own.
- (4) To support all National legislation aimed at bettering the condition of all children.

Although the membership in fact includes the entire family unit, the mothers are the primary working members. The approximate outreach is over 25,000.